

A Forest Peoples Programme Briefing Paper

A Failure of Accountability

**Indigenous Peoples, Human Rights and
Development Agency Standards:**

a reference tool and comparative review

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Executive Summary

This comparative review of international donor and development agency policies finds that of the 27 main multi- and bilateral agencies surveyed, only a few agencies have specific policies that address the needs and rights of indigenous peoples.

- Only 8 international development agencies have dedicated formal policies on indigenous peoples: EU, UNDP, World Bank, Asian Development Bank, Danida, DGIS-Netherlands, BMZ-Germany, AECI-Spain (Table 1);
- Only 4 of these policies contain some mandatory standards or binding safeguards: World Bank, ADB, Danida and BMZ (Table 2);
- The other 4 policies are not binding and only constitute optional, good practice principles and guidelines: EU/EC, UNDP, DGIS, AECI;
- Only 3 of these policies employ an explicit rights-based approach: UNDP, DGIS, BMZ (regional policy);
- Two policies contain no clear *operational* standards for development planning and field implementation (EU/EC, DGIS), while four other policies only feature limited operational instructions (AECI, BMZ, Danida, UNDP);
- Half of these policies contain out-of-date provisions that fail to meet current international human rights and sustainable development standards relating to indigenous peoples: World Bank, ADB, DGIS, AECI;
- Although the World Bank Group led the way in standard-setting on indigenous peoples and development in the 1980s, the Bank is no longer a leader in the field. Its proposed new policy on Indigenous Peoples falls far behind current international standards;
- 2 agencies are currently formulating policies on indigenous peoples: NORAD and CIDA (though the latter policy will only deal with indigenous knowledge issues).
- 2 agencies which do not have a specific policy on indigenous peoples do include consideration of indigenous peoples in their operational policies on resettlement and environmental assessment (Inter-American Development Bank – IDB, USAID);
- Among the 19 agencies that do not possess a specific policy, 7 of them identify indigenous peoples as a ‘target group’ for overseas aid (WHO, IDB, Indigenous Peoples Fund, SDC-Switzerland, DDC-Austria, Finland and USAID)
- 4 agencies have internal guidelines referring to indigenous peoples (IDB, IFAD, UNESCO and DFID)

More surprising still is the general finding that although most the development agencies surveyed have publicly committed themselves to promoting greater accountability in the international development system, almost none have instituted formal accountability mechanisms to empower rights holders and citizens affected by their official development aid. In summary:

- Only *three* multilateral agencies have formal appeals and accountability mechanisms to back up agency commitments set out in their dedicated policies or sectoral standards on indigenous peoples (World Bank, ADB and IDB). These procedures are found to be defective because they are very centralised, cumbersome to deal with and have restrictive mandates that limit capacity to initiate practical corrective actions and redress.
- *Not one* of the 13 bilateral agencies surveyed has established formal and accessible accountability mechanisms and complaints procedures for its official overseas aid operations.

The review has been undertaken with the aim of taking stock of progress towards the adoption of international development standards on indigenous peoples in response to recommendations set out in Agenda 21 in 1992 and the official goals of the United Nations International Decade of the World's Indigenous People (1995-2004). The assessment has also been carried out with the specific aim providing follow up to an international workshop involving indigenous peoples representatives and international development agencies held in Hundedsted in Denmark in 2001, which had resulted in the *Hundedsted Principles on Indigenous Peoples, Biodiversity, Good Governance and Development*. These principles urged development agencies to develop their own policy on indigenous peoples and establish accountability and appeals mechanisms to allow indigenous peoples to engage effectively in development.

The study concludes that having a dedicated policy on indigenous peoples can help development agencies to implement a rights-based approach to development and empower indigenous rights-holders and communities by providing a basis for accountability. A specific policy can also improve development effectiveness, support better targeted development assistance, and serve as a useful yardstick for monitoring and evaluation. The review therefore recommends that multilateral and bilateral development agencies should:

- ❑ Develop specific policies on indigenous peoples. These policies should be based on and be consistent with international human rights and environmental standards and be formulated with direct and substantial input from indigenous peoples themselves;
- ❑ Make sure policies contain clear *binding* operational standards on the steps necessary to implement key bench marks and requirements, particularly in relation to land ownership, tenure and resource rights, free prior and informed consent, effective participation and protection from forced relocation;
- ❑ Include mandatory *participatory human rights impact assessments* (HRIA) as part of social impact studies;
- ❑ Back up dedicated policies with associated accountability and appeals mechanisms to ensure rights-holders and affected communities can raise issues about poor implementation of policy requirements and seek redress when development projects disregard or violate their rights;
- ❑ *Develop a specific formal and mandatory public policy on accountability and appeals standards for their official aid and development operations;*
- ❑ Support collaborative initiatives aimed at identifying models for project and programme accountability, including establishment or strengthening of effective, user friendly mechanisms;
- ❑ Use the United Nations Draft Declaration on the Rights of Indigenous Peoples and *up-to-date* best practice recommendations such as the World Commission of Dams as a source of policy standards;
- ❑ Ensure adequate resources, training and staff are available to properly apply the policy across the agency and to cover the costs of its implementation in development projects and programmes;
- ❑ Ensure that their Country offices and missions are familiar with policies on indigenous peoples and that information about and compliance with these policies is a formal part of discussions with government counterparts and implementing bodies;
- ❑ Involve indigenous peoples and their representative organisations in monitoring, evaluating and reviewing policy implementation;
- ❑ Establish advisory committees comprised of indigenous peoples at the country and international level to provide up front advice and assistance with proposed projects and programmes and liaise with the UN Permanent Forum on Indigenous Issues;
- ❑ Make sure indigenous peoples' representatives and experts take part in both individual agency and global intergovernmental initiatives to formulate development standards that directly or indirectly affect their rights and interests.

Table 1: A comparison of development agency policies on indigenous peoples

Agency ^a	Do they have a policy on indigenous peoples?	Is it Global or Regional?	Does the policy contain binding minimum standards?	Do they provide operational guidance? ^b	Is there a formal accountability mechanism?
<i>Multilaterals</i>					
EU/EC	✓	G	✗	✗	✗
World Bank	✓	G	✓	✓	✓
Inter-American Development Bank ^c	✗	-	-	✓	✓
Indigenous Fund	✗	-	-	-	✗
Asian Development Bank	✓	R (Asia)	✓	✓	✓
African Development Bank	✗	-	-	-	✗
UNDP	✓	G	✗	✓ (limited)	✗
FAO	✗	-	-	-	✗
IFAD	✗	-	-	-	✗
UNEP	✗	-	-	-	✗
WHO	✗	-	-	-	✗
UNICEF	✗	-	-	-	✗
UNHCR	✗	-	-	-	✗
UNESCO	✗	-	-	-	✗
<i>Bilaterals</i>					
Danida (Denmark)	✓	G	✓	✓ (limited)	✗
DGIS (Netherlands)	✓	G	✗	✗	✗
BMZ (Germany)	✓	R (L Am)	✓	✓ (limited)	✗
AECI (Spain)	✓	R (L Am)	✗	✓ (limited)	✗
SIDA (Sweden)	✗	-	-	✓ (limited)	✗
NORAD (Norway)	Developing	-	-	-	✗
Finland	✗	-	-	-	✗
DGIC (Belgium)	✗	-	-	-	✗
DDC (Austria)	✗	-	-	-	✗
SDC (Switzerland)	✗	-	-	-	✗
DFID (UK)	✗	-	-	✓	✗
CIDA (Canada)	Developing	-	-	✓ (on IPK)	✗
USAID	✗	-	-	✓ (sectors)	✗
Totals	8	5G, 3R	4	10	3

a: Five agencies have adopted an explicit rights-based approach to development: UNDP, SIDA, DGIS, SDC and Finland. At least eleven agencies have adopted policies to promote human rights in their official aid programmes: EU/EC, UNDP, Danida, DGIS, SIDA, SDC, DDC, CIDA, Finland, DFID and USAID.

b: Danced, SIDA and BMZ apply standards on indigenous peoples in their policies on the CBD. The EU/EC and BMZ include specific principles and guidelines on indigenous peoples in their forest strategies.

c: There are signs that the IDB may recommend the development of a specific mandatory policy on indigenous peoples in its forthcoming Strategy on Indigenous Peoples (cf. BIC 2003c).

Table 2: Summary evaluation of standards, provisions and institutional frameworks of development agency policies on indigenous peoples

Policy standards and provisions	EU/EC (1998)	World Bank: (1991)	ADB (1998)	UNDP (2001)	Danida (1994)	DGIS (1993)	BMZ (1996)	AECI (1997)	Total
1. Institution-wide	✓	✓	✓	✓	✓	✓	✗ (L Am)	✗ (L Am)	6
2. Practical operational rules and procedures	✗	✓	✓	✓ (a few)	✗	✗	✓ (a few)	✓ (a few)	5
3. Broad principles/key issues/agency priorities	✓	✓	✓	✓	✓	✓	✓	✓	8
4. Provisions derived from and consistent with international Human rights and Env'tal standards	✓	✗	✗	✓	✓	✓	✓	✗	5
5. Rights-based approach	✓ (implicit)	✗	✗	✓	✓ (implicit)	✓	✗	✗	4
6. Binding standards/mandatory requirements	✗	✓ (some)	✓ (some)	✗	✓	✗	✓	✗	4
7. Self-identification key criterion	✓ (implicit)	✗	✗	✓	✓ (implicit)	✓ (implicit)	✗	✗	4
8. Self-development approach	✓	✗	✗	✓	✓	✓	✓	✓	6
9. Free and prior informed consent	✓	✗	✗ (partial)	✓	✓ (implicit)	✓ (implicit)	✓ (implicit)	✓ (implicit)	6
10. Baseline studies	✗	✓	✓	✗	✗	✓	✓	✓	5
11. Impact assessments (SA,EA,HRIA etc)	✓ (SA/EA)	✓ (if -ve impacts)	✓ (if -ve impacts)	✓ (EA/SA rec.)	Not clear	Not clear	✓	✓	6 (not always)
12. Effective participation	✓	✓	✓	✓	✓	✓	✓	✓	8
13. Culturally appropriate participation	✓	✗	✓	✓	✓	✓	✗	✗	6
14. Protection from forced relocation	✓ (implicit)	✗	✗	✓	✓ (implicit)	✓ (implicit)	✓	✗	5
15. Land <i>ownership</i> and property rights	✓ (implicit)	✓ (implicit)	✗	✓	✓ (implicit)	✓	✓	✗	6
16. Land and resource access/use rights	✓	✓	✓	✓	✓	✓	✓	✗	7
17. Protections for collective rights	✓ (implicit)	✗	✓	✓	✓	✗	✓	✗	5
18. Benefit sharing	Not clear	✓	✓	✓	✓	✗	✓	✗	5
19. Indigenous plan or component	✗	✓	✓ (if -ve)	✗	✗	✗	✗	✗	2
20. Cross-sectoral (econ, health, educ. Etc)	✗	✓	✗	✓	✓	✗	✗	✗	3
21. Performance-based indicators	✗	✗	✗	✗	✗	✗	✗	✗	0 (not explicit)
22. Participatory monitoring	✓	✓ (optional)	✓ (optional)	✓	✗	✗	✗	✗	4
23. Tied accountability/appeals mechanisms	✗	✓	✓	✗	✗	✗ (mention)	✗ (mention)	✗	2
24. Addresses transaction costs of implementation	✗	✓	✓	✓	✗	✗	✗	✗	3
25. Redress and compensation provisions	✓	✓ (implicit)	✓ (implicit)	✗	✗	✗	✗ (mention)	✗	2 (not retro.)
26. Capacity-building (IP and/or govt)	✓ (IP+ govt)	✓ (IP+ govt)	✓ (IP+ govt)	✓ (IP+ govt)	✓ (IP/IPOs)	✗	✓ (IP/IPOs)	✓ (IP+ govt)	7
27. Lines of responsibility for implementation	Not clear	✓	✓	✓	✗	✗	✗	✗	3

Preface

Information in this review has been obtained through a literature review and an Email survey of the main development agencies and through research on the internet. Every effort has been made to present accurate and up-to-date information. However, due to the lack of face-to-face interviews and the absence of replies to Email queries by some agencies, some information may be incomplete. Agencies wishing to clarify or add information, or rectify any information they consider inaccurate, may advise the author who will seek to amend subsequent versions of the document if appropriate.

It is recommended that anyone using this reference tool should also view the complete policy texts via the internet links provided. Scrutiny of original policy documents is essential to obtain comprehensive information on the standards and priorities of specific agencies as they relate to indigenous peoples and development.

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1.0 Introduction

Over the last twenty years several international development agencies have adopted specific policies which contain general principles and practical rules intended to respect the inherent rights and address the special needs of indigenous peoples. The adoption of such policies has been in large part due to the lobbying of the indigenous movement, which has consistently called on international financial institutions and the donor community to uphold indigenous peoples' rights and take account of their priorities in development policy and practice.¹ The indigenous campaign for recognition of their rights by governments and development agencies began in the 1950s, gathered pace in the 1970s² and consolidated in the 1980s. During the latter decade, indigenous organisations and human rights, environment and development NGOs were successful in publicising the devastating negative impacts on indigenous peoples of mega transport, energy, mining and agricultural colonisation projects financed by multilateral agencies such as the World Bank and European Commission. In response to this external pressure, the World Bank initiated an international standard-setting process on indigenous peoples and development when it adopted its first operational policy on 'tribal people' in 1982 (section 2.2).

In the late 1980s, indigenous representatives made powerful testimonies to the WCED hearings on environment and development in which they urged governments and development institutions to protect indigenous land, resource and participation rights and to value traditional knowledge and land use as alternative models for sustainable development. The WCED acted on these testimonies by acknowledging that indigenous peoples and their communities should be recognised as a 'touchstone' for sustainable development policy.³ Indigenous peoples at both the regional and global levels also made indirect inputs to standard-setting processes through the submission of political declarations to governments and agencies attending the United Nations Conference on Environment and Development (UNCED) held in Rio in 1992. These declarations emphasised that sustainable development initiatives affecting indigenous communities and territories must be based on the prior full and effective recognition and realisation of indigenous peoples' rights (Box 1 and Box 2). Although the Rio process failed to acknowledge the essential role of human rights in development, the intergovernmental plan of action known as Agenda 21, the non-legally binding Forest Principles and the overall political statement stemming from the summit all recognise the potential valuable role of indigenous peoples in achieving sustainable development (section 1.x below). Principle 22 of the Rio Declaration affirms:

“Indigenous people and their communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development”

¹ See Jacques de Kort (1997) for a summary of the growth of the indigenous movement and indigenous lobbying targeting governments and UN agencies in relation to indigenous rights and development. See also Berman (1993), Gray (1997a) at pages 9-20 and Brysk (2000).

² See, for example, the 1971 Barbados Declaration at <http://www.drugwar.com/akhabarbaradosdeclaration.shtml>

³ World Commission on Environment and Development (1987) *Our Common Future* Oxford University Press, Oxford at page 116.

Box 1: Some Key Principles and demands relating to Sustainable Development in the Charter of the Indigenous-Tribal Peoples of the Tropical Forests ^a

- *There can be no rational or sustainable development of the forests and of our peoples until our fundamental rights as peoples are respected (Article 12)*
- *The recognition, definition and demarcation of our territories in accordance with our local and customary systems of ownership and use (Article 14)*
- *The right to the exclusive use and ownership of the territories which we occupy. Such territories should be inalienable, not subject to distraint and unnegotiable (Article 16)*
- *Control of our territories and the resources we depend on: all development in our areas should only go ahead with the free and informed consent of the indigenous people involved or affected (Article 20)*
- *The right to be informed, consulted and, above all, to participate in the making of decisions on legislation or policies: and in the formulation, implementation or evaluation of any development project, be it at local, national or international levels, whether private or of the state, that may affect our future directly or indirectly (Article 23)*
- *All major development initiatives should be preceded by social, cultural and environmental impact assessment...(Article 24)*
- *National or international agencies considering funding development projects which may affect us, must set up tripartite commissions - including the funding agency, government representatives and our own communities as represented through our representative organisations - to carry through the planning implementation, monitoring and evaluation of the projects (Article 25)*
- *The cancellation of all mining concessions in our territories imposed without the consent of our representative organisations...(Article 26)*
- *A halt to all imposed programmes aimed at resettling our peoples away from their homelands (Article 28)*
- *A redirection of the development process away from large-scale projects towards the promotion of small-scale, initiatives controlled by our peoples...(Article 29)*
- *Promotion of the health systems of the indigenous peoples, including the revalidation of traditional medicine, and the promotion of programmes of modern medicine and primary health care. Such programmes should allow us to have control over them, providing suitable training to allow us to manage them ourselves (Article 31)*
- *Establishment of systems of bilingual and intercultural education... (Article 32)*
- *Our policy of development is based, first, on guaranteeing our self-sufficiency and material welfare, as well as that of our neighbours; a full social and cultural development based on the values of equity, justice, solidarity and reciprocity, and a balance with nature. Thereafter, the generation of a surplus for the market must come from a rational and creative use of natural resources developing our own traditional technologies and selecting appropriate new ones (Article 34)*

a: The full Charter is available at <http://www.gn.apc.org/iaip/chart/char1.html>

Box 2: Some Key principles and demands relating to development in the Kari Oca Declaration and Indigenous Peoples Earth Charter,^b 25-30 May 1992

- *Our right to self-determination must be recognized (14)*
- *We maintain the right to decide the direction of our communities (20)*
- *Our territories are living totalities in permanent vital relation between human beings and nature. Their possession produces the development of our culture. Our territorial property should be inalienable, unceasable, and not denied title. Legal, economic and technical back-up are needed to guarantee this (32)*
- *We assert our rights to demarcate our traditional territories. The definition of territory includes space (air), land, and sea. We must promote a traditional analysis of traditional land rights in all our territories (34)*
- *Where indigenous territories have been degraded, resources must be made available to restore them ...Nation states must revise in depth agrarian, mining and forest policies (35)*
- *Indigenous peoples must not be removed from their lands in order to make it available to settlers or other forms of economic activity on their lands (42)*
- *Traditional areas must be protected against... environmental degradation (46)*
- *The indigenous peoples' strategies should be kept in a reference framework for the formulation and application of national policies on environment and biodiversity (60)*
- *Indigenous peoples must consent to all projects in our territories. Prior consent being obtained the peoples must be fully and entirely involved in any decisions. They must be given all the information about the projects and its affects... (61)*
- *Recognising indigenous peoples' harmonious relationship with Nature, indigenous sustainable development strategies and cultural values must be respected as a distinct and vital sources of knowledge (67)*
- *In order for indigenous peoples to assume control, management and administration of their resources and territories, development projects must be based on the principles of self-determination and self-management (69a)*
- *Development that occurs on indigenous lands, without the consent of indigenous peoples, must be stopped (75)*
- *Traditions cannot be separated from land (and) territory (97)*
- *At local, national, international levels, governments must commit funds to new and existing resources to education and training for indigenous peoples, to achieve their sustainable development, to contribute and to participate in sustainable and equitable development at all levels (107)*

b The full Kari-Oca Declaration and Indigenous Peoples' Earth Charter is reproduced in International Alliance of Indigenous-Tribal Peoples of the Tropical Forest (1997) *Indigenous Peoples, Forests and Biodiversity* IWGIA, Copenhagen at pages 32-43

Acting on a recommendation of the 1993 World Conference of Human Rights, the UN General Assembly Resolution 48/163 proclaimed the *International Decade of the World's Indigenous Peoples (1995-2004)* with the goal of strengthening international co-operation for the addressing problems faced by indigenous peoples in relation to human rights, development, environment, education and health.⁴ In 1995, the General Assembly re-affirmed that the key objectives for the decade, among others, should be the promotion and protection of the rights of indigenous peoples and strengthening multilateral and bilateral cooperation in support of development activities of benefit to indigenous communities.⁵ Indigenous peoples and support organisations have drawn on these principles to press more development agencies to formulate and adopt explicit policies on indigenous peoples.

Their efforts have been rewarded with some success. Policies on indigenous peoples have now been adopted by the World Bank, the European Union, the United Nations Development Programme, the Asian Development Bank as well as the bilateral aid agencies of Denmark, the Netherlands, Spain and Germany. Several progressive donor countries including Denmark, the Netherlands and Norway have also ratified ILO Convention 169 which establishes useful procedural standards in relation to indigenous peoples and development.

However, as the International Decade draws to a close a significant number of multilateral and bilateral agencies have still not developed a dedicated policy on indigenous peoples. In an international workshop on *Indigenous Peoples, Biodiversity and Good Governance* held in Hundested, Denmark in March 2001, indigenous representative from Northern and Southern countries again called on funding agencies to develop and adopt policies for dealing with indigenous peoples in development aid and conservation programmes (Box 3 and Annex I).⁶

Purpose and scope of the review:

This review follows up indigenous peoples' call for policies and evaluates progress being made by development agencies in the adoption of standards towards indigenous peoples. The assessment is confined to governmental, intergovernmental and specialized agencies. The main aims of the review are to:

- Provide a reference document for indigenous communities and their supporters on the status of existing development agency standards;
- Evaluate these standards in terms of the accountability they provide;
- Suggest ways of strengthening them so they better promote indigenous rights.

Limits of the study:

The review does not claim to be an exhaustive analysis of every agency policy that may be of relevance to indigenous peoples nor does it claim to undertake a complete review of development agency portfolios as they affect indigenous peoples.¹ Given the time constraints for the study, the review has not examined individual projects. It has instead drawn on general policy implementation reviews and portfolio summaries where these are readily available.

⁴ UN (2001c)

⁵ General Assembly Resolution 50/157.

⁶ Alcorn (2001).

1.1 Benefits of a dedicated policy on indigenous peoples

Indigenous peoples maintain that a dedicated operational policy is important because it can help development agencies and donors to respect their *inherent* rights in programmes and projects that may either directly or indirectly impact their communities and territories. They reject any suggestion that specific policies are divisive, or that they constitute some form of privileged treatment. Instead they point out that targeted development policies on specific themes are part and parcel of good development and efficient poverty reduction practices, which are most effective when careful attention is paid to detail and to the diversity of needs, problems and priorities facing local communities in developing countries.

The potential development benefits of a specific agency policy are confirmed by a recent independent evaluation of the implementation of the World Bank's 1991 policy on Indigenous Peoples. The review finds strong evidence that good implementation of the Bank's particular policy is '*positively correlated with better results for poverty reduction...*' and that the policy has helped the World Bank development assistance focus better on poor people.⁷

Indigenous peoples highlighted many of the arguments in favour of a dedicated donor policy in their recommendations made to the Hundested workshop in 2001 (Box 3). In summary, a dedicated policy can yield multiple benefits to both affected people and development agencies because (if properly applied) such a policy can:

- Provide mechanisms to address the rights and concerns of indigenous peoples, who are easily sidelined by the development process;
- Foster measures to correct or account for historical injustices and inequalities;
- Open political space for local communities and their representatives to reject unacceptable development plans and identify their own needs and priorities;
- Facilitate culturally appropriate participatory planning, implementation and follow-up;
- Empower rights holders by providing external accountability of the development agency to local communities who may refer to key principles and standards in the policy in order to raise concerns with project managers and, if problems are not resolved, to make complaints and seek redress through the relevant agency or authority;
- Establish clear rules and guidelines for staff to follow – staff who are very often not trained in dealing with the issues of concern;
- Offer donors a strong position from which to enter into policy dialogues with governments on the structural causes of inequality and discrimination;
- Constitute an agreed basis for negotiating loans or contracts with borrowers, recipient countries, sponsors, clients or project/programme beneficiaries;
- Help justify requirements for special funds for project processing;
- Create a yardstick for assessing “development effectiveness”;
- Improve overall development quality.

⁷ OED (2003) at page 2 and paragraph 4.1.

Box 3: *Good Governance, Indigenous Peoples, and Biodiversity Conservation: recommendations for enhancing results across sectors* <http://www.BSPonline.org>

Guiding Principles – the foundation of best practice – are:

- > Have a written policy. Enforce safeguards – do no harm.
- > Have direct contact and relationships with indigenous peoples.
- > Base relationships on respect, mutual learning, and reciprocal accountability.
- > Empower and effectively engage indigenous social and political structures.
- > Stay the course. Long term relationships are a key to success.
- > Be transparent.
- > Support indigenous peoples in efforts to address core social issues that affect all citizens.
- > Raise the priority of indigenous rights and environmental concerns among other competing priorities during all bilateral and multilateral negotiations.

Policy Reform – best practices:

- > *Donors should demonstrate leadership among nations and toward the private sector by supporting policies that create political space and by enabling conditions for indigenous peoples to exercise their full benefits of citizenship and participate in civil society as respected, collective groups co-existing within and between nation states, and as members of international society with full rights and dignity.*

Operational Reform – best practices in project level assistance:

- > *Donors should demonstrate leadership by implementing projects that adhere to standards set by donor policies and international conventions, and respond to indigenous peoples' needs strengths, and interests.*

Capacity-building for informed engagement – best practices:

- > *Donors should support creative assistance to respond to the expressed needs of indigenous peoples so that they may be fully informed and capable of participating in strategic decision-making, policy dialogue, and project implementation – and otherwise more effectively participate in civil society at local, national, and international levels.*

Sustainable development and poverty alleviation:

- > Programs need to support... “financial independence and secure tenure as the companions to sound self-government. This often requires the enactment and implementation of new laws that establish the legal personalities of communities...secure access and corporate territorial tenure are essential for sound resource management and poverty alleviation.”
- > Poverty alleviation programmes need... “solid monitoring frameworks that incorporate information and active participation from locally driven monitoring networks as well as consultants monitoring externally selected measures”.
- > “...schemes for economic activities are inadequate if larger governance issues are not addressed.”

Reforming internal donor frameworks:

- > “...Enhance staff understanding and capacity in embassies and donor offices so that Indigenous Peoples policies are applied in practice and in negotiations”
- > “...Donors should create Consultative Groups (CGs) focusing on Indigenous Peoples at regional and global levels. As well, they should create budget lines for direct interaction with indigenous peoples and hire adequate staff resources to work directly with them, at a minimum to ensure that projects through third parties are indeed meeting indigenous peoples' needs”
- > “...donors should create expanded dedicated offices that focus on indigenous peoples' issues to ensure that indigenous peoples and biodiversity interests are integrated into the activities and investments of all donor sub-units (as a cross-cutting element along with other themes like poverty and gender).”

- a. Adapted from Alcorn (2001).
- b. These “best practice” recommendations emerged from an international workshop, held in Hundested, Denmark, 7-9th March 2001, where representatives of multilateral, bilateral and private donors exchanged insights and experiences with indigenous participants from Asia, Europe, the Americas, Africa and the Arctic.

1.2 Criteria and preconditions for an effective policy

In common with any operational policy, an effective policy on indigenous peoples must:

- Have clear preconditions that should be complied with before the agency will support a particular development project or programme;
- Apply provisions which are consistent with relevant international human rights and sustainable development standards, including specific standards and guarantees relating to the rights of indigenous peoples;
- Contain unambiguous procedural and substantive operational rules or benchmarks for project preparation, implementation, monitoring and evaluation, which are binding on agency staff, managers and consultants;
- Count on adequate resources and appropriate institutions to implement the actions and activities required under the policy (monitoring and compliance);
- Have associated appeals and accountability mechanisms which are accessible to affected and/or participating communities.
- Be known to (and understood) by intended beneficiaries.

1.2.1 Accountability mechanisms

If development aid standards are to be useful, then they should contain mandatory rules which set out principles and procedures that agency officials and field staff are obliged to follow. Agencies should establish complaints and appeals mechanisms to uphold these standards and demonstrate institutional commitment to transparency, public participation and public accountability. Proper standards with means of redress can *empower* rights holders and citizens in the development process by helping them to claim and exercise their rights. In the absence of accessible accountability mechanisms, operational guidelines risk becoming rhetorical statements as they offer no practical framework for making official aid accountable to local people and their representative organisations. Without binding standards and formal means of redress, development agency managers and field staff can never be held to account for problems and failures in planning and implementation.

Proper accountability mechanisms are central to the implementation of a *rights-based* approach to development founded on the principles of *due diligence*, *non-discrimination*, *participation*, *transparency*, *accountability* and *redress*.⁸ Accountability and transparency are consistent with Principle 10 of the Rio Declaration on Sustainable Development and in line with fundamental principles of *good governance* which most official aid agencies promote.⁹ By adopting proper accountability mechanisms development agencies can be seen to practice the principles that they claim to endorse and support.

⁸ See Feeney (1998) *at* 147

⁹ *Ibid.* *at* page 148.

The steps which a development agency should take to become more accountable to local people should necessarily involve the establishment of permanent spaces within both the central and decentralised structure of the institution where rights holders may raise concerns and, when needed, seek remedial actions or compensation when development interventions go wrong.

At the local level, aid agencies should support the establishment of project or programme-level monitoring and accountability mechanisms designed and instituted through a process of dialogue, prior *consent* and *mutual negotiation* with rights holders and their organisations. These local mechanisms might be linked to country level appeals processes and watchdog bodies according to the wishes and priorities of beneficiaries and affected communities.

1.2.2 Useful Operational standards

Key elements that should inform effective development planning and projects with indigenous peoples can be found in recommendations made in numerous indigenous peoples' declarations and lessons derived from development practice. Many of these recommendations stress that development agencies and other actors should respect indigenous rights by ensuring that their own policies and programmes uphold such rights and help countries implement international agreements on the rights of indigenous peoples. Major emphasis is placed on the fact that indigenous peoples' welfare and their fundamental rights to self-determination and self-development depend on secure land and resource rights. In relation to the right to self-development, indigenous peoples "...argue consistently and vociferously that they do not want to be consulted and participate in development which is outside of their control and is without their informed consent."¹⁰

Indigenous recommendations and experience on the ground also stress that indigenous peoples see the primary objectives of development as achieving self-sufficiency, tenurial security and control over lands and natural resources and recognition of local institutions and customs.¹¹ In this context, obtaining cash incomes and acquiring improved access to trade and the market, although often important goals, are usually secondary objectives.¹²

Indigenous peoples' representatives have also made specific recommendations on the operational standards that should be adopted by development agencies as part of their inputs to various consultation processes undertaken during the formulation of some of the dedicated policies discussed in this review. Recommended elements for a useful policy include, but are not limited to:

¹⁰ Gray 1997b:291-292.

¹¹ See, for example, Indigenous Peoples' Declaration (1992a,b; 1993,a,b; 1996; 1997; 2000a,b; 2001a,b; 2002a,b,c,d,e), Indigenous Peoples' Caucus (2001,2002a,b), International Alliance 1996; 1997a,b); Corpuz (1997a,b,c), Camac (2002) and Menchu-Tum (2002).

¹² Beauclerk *et al* (1988), Colchester (1989), Chirif *et al* (1991), Chase-Smith (1996), Gray (1997a,b), Daes (2001), Iturralde (2001), Stavenhagen, R (2001b) *at* paras. 30-3, Plant (2002a) *at* page 61; Plant (2002b) *at* pages 40, 43; (2002c) *at* pages 35ff. See also Bamba (2002).

- ❑ Binding standards consistent with international human rights, environmental and sustainable development standards;
- ❑ A rights-based and self-development approach;
- ❑ Procedures to respect and implement the right of free and prior informed consent;
- ❑ Practical steps to address land tenure, property and resource rights;
- ❑ Scoping or ‘strategic assessment’ to identify indigenous issues and priorities;
- ❑ Clear benchmarks for ‘no go’ situations: ‘hands-off’ criteria;
- ❑ Participatory *field-level* baseline studies and human rights impact assessments;
- ❑ Legal framework studies;
- ❑ Cultural, social, environmental and poverty risk impact assessments;
- ❑ Cross-sectoral approach: territory, livelihood, health, education, governance etc.
- ❑ Options assessments;
- ❑ Active policy dialogue (with governments and indigenous movement);
- ❑ Clear measures to identify and respect collective rights;
- ❑ Clear protections and safeguards to prohibit and prevent forced relocation;
- ❑ Mechanisms to enable effective and culturally appropriate participation throughout the project/programme cycle;
- ❑ Measures to value and promote indigenous knowledge and technologies;
- ❑ Components for capacity building, institutional strengthening and technical support (as appropriate);
- ❑ Guidance on steps to establish accountability, appeals and monitoring arrangements through mutual agreements with affected communities and their organisations;
- ❑ Requirements for performance-based indicators agreed with beneficiaries/affected communities.
- ❑ Procedures for complaints and redress;
- ❑ Provisions to allocate adequate resources to implement the policy requirements.

1.3 Indigenous peoples’ rights and international standards

Over the last two decades indigenous peoples have made remarkable progress in securing recognition of their rights in international human rights and environmental law.ⁱⁱ

1.3.1 Human Rights Standards

International law recognises that indigenous peoples have inherent rights that derive from their distinct identities and their close and special attachment to their ancestral lands. These rights are established in several different human rights instruments including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), the American Convention on Human Rights and the Convention on Biological Diversity, among others.¹³

Important procedural standards on indigenous peoples and development are set out in the ILO Convention 169, which is dedicated exclusively to indigenous and tribal peoples’ rights (Box 4). Taken as a whole, it is possible to point to these authoritative treaties and associated international jurisprudence and assert that indigenous peoples now enjoy rights to:

¹³ Comprehensive treatment of existing and emerging standards on the human rights of indigenous peoples can be found in other guidelines in this series (see MacKay2001a,b,c; 2002a,b,c; 2003) and in various FPP reports and briefing papers (FPP 2002c,d,e,f,h). See also Anaya (1996), Wiessner (1999), Thornberry (2002) and Salomon and Sengupta (2003:18-22).

- equal protection of the law and non-discrimination
- exercise their customary law
- represent themselves through their own institutions
- self-determination and self-development
- free and prior informed consent
- ownership and control over their traditional territories, lands and resources
- collective as well as individual rights
- cultural integrity
- be free from forcible relocation
- participation in decisions and activities which may affect them
- a healthy environment
- control and share in the benefits of the use of their traditional knowledge
- restitution of lands and property taken unjustly or without prior consent
- fair compensation for the irrevocable loss of property and other rights

Most of these existing human rights standards relating to indigenous peoples have been codified and consolidated in the *UN Draft Declaration on the Rights of Indigenous Peoples* (Box 5). There is a broad consensus among indigenous organisations that the Draft UN Declaration constitutes a useful and up-to-date summary of their rights. For this reason, they have persistently called on intergovernmental fora and international agencies to endorse the Draft Declaration before the end of the International Decade in 2004 – a call that was again made to governments at the Johannesburg Earth Summit in August 2002.¹⁴ In the same way, indigenous peoples have urged development agencies to use the Draft Declaration as a key source of standards for their policies affecting indigenous peoples.¹⁵

1.3.2 Sustainable development standards

Several international environment and development instruments and agreements include standards relating to indigenous peoples' rights and their role in sustainable development. As noted at the beginning of this section, many of these standards on indigenous peoples and development stem from the first intergovernmental UN Conference on Environment and Development (UNCED) held in Rio in 1992. Important provisions on indigenous peoples are included in the Convention on Biological Diversity (CBD), the Rio Declaration, the Forest Principles and Agenda 21. Relevant norms also flow from the 1986 UN Declaration on the Right to Development, UNGASS (Rio Plus 5), the International Conference on Population and Development, the World Summit for Social Development (1995), the 4th World Conference on Women, the World Food Summit, the 1996 UN Conference on Human Settlements (HABITAT II), the 2000 Millennium Declaration and the 2002 World Summit on Sustainable Development.¹⁶

¹⁴ See, for example, Indigenous Peoples' Declaration 1997a, 1997b. See also, Indigenous Peoples Caucus (2002b) at para. 2.

¹⁵ International Alliance (1997a). See also See, for example, indigenous peoples' recommendations to the World Bank Group (1998-2002) in relation to the revision of its Indigenous Peoples Policy - <http://lnweb18.worldbank.org/essd/essd.nsf/28354584d9d97c29852567cc00780e2a/5e23e566bed37cd6852567cc0077f48d?OpenDocument> and [http://lnweb18.worldbank.org/ESSD/essd.nsf/1a8011b1ed265afd85256a4f00768797/c4a768e4f7c935f185256ba5006c75f3/\\$FILE/SumExtConsult-4-23-02.pdf](http://lnweb18.worldbank.org/ESSD/essd.nsf/1a8011b1ed265afd85256a4f00768797/c4a768e4f7c935f185256ba5006c75f3/$FILE/SumExtConsult-4-23-02.pdf)

¹⁶ See FPP (2002h). See also Salomon and Sengupta (2003).

Box 4: Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries ^a <http://www.unhchr.ch/html/menu3/b/62.htm>

Some key standards [Emphasis added]:

Respect for human rights:

> “Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination...” [Article 3]

Self-identification:

> “**Self-identification** as indigenous or tribal shall be regarded as a **fundamental criterion** for determining the groups to which the provisions of this Convention apply” [Art. 1.2]

Self-determination and self-development:

> “the peoples concerned have the **right to decide their own priorities for the process of development...** and to exercise control, to the extent possible, over their own economic, social and cultural development...” [Art. 7.1]

> “In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws” [Art.8.1]

> “Handicrafts, rural and community-based industries, and **subsistence economy** and **traditional activities** of the peoples concerned...shall be recognised as important factors in the maintenance of their cultures and in their **economic self-reliance** and development” [Art.23.1]

> “Upon request of the peoples concerned...” financial and technical assistance should be provided to assist them to maintain and develop their traditional economies in a sustainable manner. [Art.23.2]

Baseline studies:

> “Governments shall ensure that, whenever appropriate, studies are carried out, **in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact** on them of planned development activities” [Art.7.3]

Consultation and Participation:

> governments shall “...consult the peoples concerned, through appropriate procedures and in particular **through their representative institutions**” whenever consideration is being given to any plans or measure that may affect them [Art.6.1a; see also Articles 7.4, 15.2 and 23.2]

> “...governments shall establish means by which these peoples can **freely participate...at all levels of decision-making** in elective institutions and administrative and other bodies responsible for policies and programmes which concern them” [Art. 6.1b]

> Consultations...shall be undertaken, in **good faith** and **in a form appropriate to the circumstances, with the objective of achieving agreement or consent** to the proposed measures” [Article 6.2]

> The peoples concerned “...shall participate in the **formulation, implementation and evaluation** of plans and programmes for **national and regional development** which may affect them directly” [Article 7.1]

> Any studies on the need for special training programmes “...shall be carried out in **co-operation** with these peoples, who shall be consulted on the organisation and operation of such programmes” [Article 22.3]

Land and resource rights:

> governments shall respect the special attachment indigenous peoples have to their lands and territories ... “and in particular the **collective aspects** of this relationship” [Article 13.1]

> “The term “lands” ... shall include the **concept of territories**, which covers the total environment of the areas which the peoples concerned occupy or otherwise use” [Article 13.2]

> governments shall recognise and respect “...the rights of **ownership and possession** of the peoples concerned over the lands which they traditionally occupy shall be recognised... Particular attention shall be paid to the situation of **nomadic peoples and shifting cultivators** in this respect.” [Art. 14.1; see also (especially) Articles 17,18 and 19]

> “governments shall take steps as necessary to **identify the lands** which the peoples concerned traditionally occupy, and to **guarantee effective protection of their rights of ownership and possession**” [Art. 14.2]

> Adequate procedures shall be established within the national legal system to **resolve land claims** by the peoples concerned [Art. 14.3]

> “Governments shall take measures, **in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit**” [Article 7.4]

> indigenous and tribal peoples have rights to natural resources that must be safeguarded including rights to (i) manage and conserve natural resources [Art 15.1], (ii) be **consulted before** natural resources on their territories are explored or exploited (iii) share in benefits from natural resource exploitation (iv) compensation for damages [Art 15.2]; The peoples concerned should be consulted whenever consideration is being given to alienating their lands to outside the community [Article 17.2]

Protection from resettlement:

- > Subject to other Articles of the Convention “...the peoples concerned shall **not be removed** from the lands which they occupy” [Art.16.1]
- > “Where the relocation of these peoples is considered necessary as an **exceptional measure**, such relocation shall take place only with their **free and informed consent**...” [Article 16.2]
- > “Where their consent cannot be obtained, such relocation shall take place only following **appropriate procedures**...including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned” [Article 16.2]
- > “Wherever possible, these peoples shall have the **right to return** to their traditional lands, as soon as grounds for relocation cease to exist” [Article 16.3]
- > “Where such return is not possible, as determined by agreement, or, in the absence of such agreement, through appropriate procedures these peoples shall be provided in all possible cases with **lands of quality and legal status** at least **equal** to that of the lands previously occupied by them” [Article 16.4]
- > “Persons thus relocated shall be fully **compensated** for any resulting loss or injury” [Article 16.5]

Targeted and culturally appropriate development:

- > “**Special measures** shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.” [Article 4.1] ...Such measures shall not be contrary to their “freely expressed wishes” [Article 4.2]
- > “The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their **participation** and **co-operation**, shall be a matter of priority in plans for the overall economic development of areas they inhabit...” [Article 7.2]
- > Action...shall include assistance to the peoples concerned to: “promote the full realisation of social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions” and to “...eliminate socio-economic gaps that may exist between indigenous peoples and other members of the national community, in a manner compatible with their aspirations and ways of life” [Article 2.2b,c]
- > “Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take account of their **economic, geographic, social and cultural conditions** as well as their **traditional** preventive care, **healing practices and medicines**” [Article 25.2]
- > Special training programmes shall be provided where existing training or vocational programmes do not **meet the special needs** of the people concerned [Article 22.2]
- > “Any special training programme shall be based on the economic, environment, social and cultural conditions and the practical needs of the people concerned...” [Article 22.3]
- > Education programmes and services shall be developed and implemented in co-operation with the peoples concerned to address their **special needs** and “...shall incorporate their histories, their knowledge and technologies, their value systems and further their social, economic and cultural aspirations” [Article 27.1]
- > “Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned” [Article 28.3]
- > “Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language... When this is not practicable, the competent authorities shall undertake **consultations** with these peoples with a view to adoption of measures to achieve this objective” [Article 28.1]
- > “Governments shall ensure that adequate health services are made available to the people concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control...” [Article 25.1]
- > “The health care system shall give preference to the training and employment of local community health workers...” [Article 25.3]

Ratifications: The Convention has so far been ratified by 17 countries: Colombia, Bolivia, Ecuador, Mexico, Brazil, Argentina, Dominica, Guatemala, Honduras, Peru, Venezuela, Costa Rica, Paraguay, Fiji, Netherlands, Denmark, Norway – see <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C169>

Accountability mechanism: The ILO requires country reports from governments who have ratified the Convention every 3-4 years. The reports are reviewed by the Committee of Experts on the Application of the Convention and the Conference Committee on the Application of Standards. These ILO monitoring bodies may make “Direct Requests” for action to remedy violation of the convention, or make “Observations”, which are published in reports to the International Labour Conference. There is also an ILO complaints procedure, which is accessible through any labour organisation (e.g., indigenous peoples’ organisation representing workers, unions and cooperatives) or any member of the ILO Conference (see <http://ilolex.ilo.ch:1567/english/iloquery.htm>). See ILO (2000) *ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169)* ILO, Geneva. See also MacKay (2002b) *A Guide to Indigenous Peoples’ Rights in the International Labour Organization* available at: <http://forestpeoples.gn.apc.org/>

Box 5: Draft UN Declaration on the Rights of Indigenous Peoples: some key standards and principles <http://www1.umn.edu/humanrts/instree/declra.htm>

All indigenous peoples have the right to:

Human Rights and Treaty agreements:

- full and effective enjoyment of all human rights recognised by the United Nations and international human rights law [Part I, Articles 1,2 and four]
- collective, as well as individual, human rights [Part II, Articles 6,7,8; Part VII, Articles 32 and 34, Part VIII, Art.39]
- recognition, observance and enforcement of existing treaties, agreements and other constructive arrangements with States or their successors [Part VII, Article 36]

Self-identification:

- identify themselves individually and collectively as indigenous and be recognised as such [Part II, Art. 8]

Self-determination and self-development:

- self-determination and to freely determine their economic, social and cultural development [Part I, Article 3, Part III, Articles 12, 13 and 14, Part IV, Part V, Art. 21 and 24, Articles 15-18, Part VI, Articles 25-30; among others]
- autonomy and self-government in matters relating to internal and local affairs [Part VII, Article 31]
- determine priorities and strategies for exercising their right to development [Part V, Article 23]
- "...determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require States to obtain their free and informed consent prior to approval of any projects affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources..." [Part VI, Art. 30]
- establish and control their own educational systems and institutions providing culturally appropriate education in their own languages [Part IV, Article 15]
- access adequate financial and technical assistance, from States and through international cooperation, to freely pursue their self-development [Part VIII, Article 38]

Land, territorial and resource rights:

- "own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, tradition, customs, land tenure systems and institutions for the development and management of resources..." [Part VI, Article 26]
- "full ownership, control and protection of their cultural and intellectual property..." [Part VI, Article 28]
- restitution of lands, territories and resources as well as cultural and intellectual property where these have been taken or damaged without the free and informed consent of the peoples concerned or in violation of their laws and customs [Part III, Article 12 and Part VI, Article 27]
- recognition, respect and measures to protect indigenous sacred places, including burial sites, ecosystems, plants and animals [Part III, Art.13]

Protection from forced relocation:

- "Indigenous peoples shall not be removed from their lands and territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation, and where possible, the option of return" [Part II, Art. 10. Especially also Art. 7]

Participation:

- participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through their chosen representatives [Part IV, Articles, 19 and 20]

Compensation:

- just and fair compensation for negative social, spiritual, cultural, environmental or economic impacts [Part V, Articles 27 and 30]
- "...access to mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as effective remedies for all infringements of their individual and collective rights..." [Part VIII, Article 39]

1.3.2.1 The Convention on Biological Diversity (CBD)

The Convention on Biological Diversity (CBD) was agreed in 1993 and entered into force as a binding treaty in 1994. In March 2003, the CBD had been ratified by 172 States and therefore is one of the most widely endorsed international agreements that includes standards on indigenous peoples.¹⁷ The Convention deals with indigenous peoples' rights and interests in articles 10(c) and (d) and 8(j). Article 8(j) deals with indigenous traditional knowledge and intellectual property rights, while Article 10(c) protects the "customary use of biological resources in accordance with traditional cultural practices." Article 10c has been interpreted to require recognition of and respect for indigenous tenure over terrestrial and marine estates, control over and use of natural resources and respect for indigenous self-determination and self-government.¹⁸

After Rio, many indigenous peoples' organisations and NGOs were disappointed that both the soft and hard instruments stemming from UNCED, including Article 3 of the CBD, consistently assert state sovereignty over natural resources. Nonetheless, human rights law and international environmental law limit the exercise of state sovereignty. In this way, state sovereignty does not and cannot supercede a state's obligations to respect indigenous peoples' rights.¹⁹ As in international processes relating to human rights conventions, standards on indigenous peoples are evolving under the CBD through the ongoing decisions of the parties to the Convention and through *ad hoc* expert and working groups and the deliberations of the Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA).

1.3.2.2 Agenda 21

Agenda 21 constitutes an extensive and detailed intergovernmental plan of action for promoting sustainable development and environmental conservation. The document contains 40 Chapters which are structured under the topics of action, objectives, activities and means of implementation. No less than **ten** chapters contain principles and intergovernmental commitments of direct or indirect relevance to indigenous peoples (Chapters 3, 6, 10, 11, 12, 13, 14, 15, 16, 18), whilst Chapter 26 is dedicated entirely to the role of indigenous peoples in sustainable development.²⁰

Chapter 26 contains principles that further establish international standards on indigenous peoples and development, most notably that indigenous peoples should be consulted about development plans or proposals that may affect them and actively participate in development projects and programmes in accordance with their needs, priorities and values. Like other soft law instruments, the action elements under Agenda 21 are exhortative rather than instructive. They consequently 'urge', 'call for', 'encourage' and advocate governments to take particular measures. Under Chapter 26, governments are encouraged to:

¹⁷ <http://www.biodiv.org/>

¹⁸ CBD (1997) *Traditional Knowledge and Biological Diversity*, UNEP/CBD/TKBD/1/2, October 1997 at page 18.

¹⁹ Schrijver (1997); Forest Peoples Programme (2001b).

²⁰ For a summary analysis of relevant principles and provisions, see Posey (1996) at pages 57-64.

- Establish arrangements to support the *active participation* of indigenous peoples in the formulation of policies and laws that may affect them;
- Protect indigenous peoples from ‘environmentally unsound’ development;
- Support sustainable livelihoods and alternative means of production;
- Provide training and capacity building for indigenous peoples;
- Involve indigenous peoples and their communities in natural resource management and conservation strategies and national plans for sustainable development;
- Strengthen legal protections and guarantees for indigenous peoples at the national and international levels;
- Promote increased control by indigenous peoples over their lands and resources;
- Develop and adopt policies and laws to recognise and protect indigenous knowledge and cultural property;
- Incorporate the needs, values and knowledge of indigenous peoples in national policies and programmes for conservation and development;
- Establish national dispute-resolution mechanisms.²¹

1.3.2.3 Emerging standards and best practice

Development standards on indigenous peoples are evolving in a number of specific development sectors. The World Commission on Dams (WCD) has developed progressive best practice guidelines for infrastructure projects which incorporate a *rights* and *risks* approach that has been widely praised by indigenous peoples as well as environmental, human rights and development NGOs [Box 6]. The formulation of these guidelines also set new precedents for inclusive, democratic and good faith public policy making that most indigenous and civil society organisations agree constitutes best practice for the international development sector. The elaboration of the WCD policy framework involved the active incorporation of different rights holders and governmental and non-governmental stakeholders whose inputs featured in the final recommendations.

Rights-based approaches and the need to include *participatory human rights impact assessments* (HRIA) as part of social impact studies are also being promoted by NGOs and indigenous organisations pushing for improved regulation of export credit agencies. There is a growing call for *participatory monitoring* and *independent monitoring* of development operations according to agreed standards and international norms.²² At the same time, the indigenous movement continues to press for new mandatory standards on requirements for social and cultural impact assessments. These demands were first made prior to UNCED and have been reiterated again and again throughout the WSSD process where indigenous peoples also called on aid agencies to base the development indicators on international standards such as Agenda 21.²³

²¹ See complete version of Ch 26 at <http://www.un.org/esa/sustdev/agenda21chapter26.htm>

²² Fern (2001b). See also Halifax Initiative (2002).

²³ *Indigenous peoples' plan of implementation on sustainable development*, August 2002, at para. 69 – <http://www.treatycouncil.org/Final%20Indigenous%20Peoples%20Implementation%20Plan.pdf>

1.4 Relevance of international standards for development agencies

Multilateral development agencies have legal *duties* to abide by customary international law.²⁴ Given the basic principles of universality of human rights, it is clear that the rights of indigenous peoples may be affected by, and are linked to the foreign and development policies of donor countries, even if those countries do not have indigenous peoples within their territories.²⁵ Development and other international agencies must also ensure that their policies and activities do not contribute to a recipient or borrower country violating their obligations under international human rights and environmental agreements (see section 3.2).

International development and donor agencies recognise that an appropriate and enabling ‘policy environment’ can help facilitate and deliver sustainable development and poverty reduction goals. Most major donor countries belong to the OECD Development Assistance Committee (DAC), which develops best practice development guidelines for official bilateral aid in support of sustainable development in developing countries (section 3.6). These guidelines advise donors to incorporate a rights-based approach to poverty reduction and the need to promote human rights and improved accountability as a central part of sustainable development. As the 2001 DAC guidelines on poverty reduction affirm:

“Powerlessness, injustice and exclusion perpetuate poverty – and make it worse. The poor need to be able to exercise their human rights to influence state institutions and social processes that affect their lives...Rights-based approaches to poverty reduction strengthen the norms and institutions that protect universal human rights...”²⁶

At the same time, DAC guidelines urge donors to develop ‘clear and credible policies’ on aid and human rights²⁷ and highlight the potential value of specific policies for specific groups:

“Of particular concern is assistance to increase the ability of so-called vulnerable groups (urban and rural poor, women, minorities, indigenous peoples, disabled persons) to formulate and organise their preferences and interests, claim their rights and obtain redress for grievances...addressing these issues will be facilitated when commitments are translated into *explicit policies*.”²⁸ [emphasis added]

In short, by formulating and adopting specific policies to uphold indigenous peoples’ rights, development agencies can demonstrate their commitment to abide by international law. They can also *empower* indigenous peoples in the development process in accordance with Chapter 26 of Agenda 21.

²⁴ See, for example, MacKay (2002a) and Salomon and Sengupta (2003). In relation to the World Bank and international agencies in general, see also Bradlow (1996), Robinson (2001) Tomasevski (1995;2001), BIC (2002), Horta (2002), Goodland (2003), Skogly (2003), Stavenhagen (2003: para. 66) and Scabus (2003).

²⁵ NAR (1993) at page 25. See especially, Kuppe 1994 at 103.

²⁶ DAC (2001) *The DAC Guidelines – Poverty Reduction: international development* OECD, Paris. See also DAC (1995) *Participatory Development and Good Governance* Development Co-operation Guidelines Series OECD, Paris at paras. 66-, page 27.

²⁷ DAC (1995) *Participatory Development and Good Governance* Development Co-operation Guidelines Series OECD, Paris at paras. 66-82. See especially para. 71.

²⁸ Ibid. at para. 79, page 27.

Box 6: Some Principles and Guidelines of the World Commission on Dams of relevance to Indigenous Peoples and local communities (emphasis added)^a

Human Rights:

- “Recognise *existing rights and those who hold them*. Those groups whose livelihoods, human rights and property and resource rights may be affected by an intervention are major **rights holders** and thus core stakeholders in a **stakeholder forum**” [Guideline 1, 1st bullet]

Baseline studies, rights, impacts and risks assessments:

- “Recognition of **rights** and assessment of risks are the basis for the identification and inclusion of stakeholders in decision-making...” [Ch 8, policy principle 1.1]
- “Identify those at risk through vulnerability and **risk analysis**, including those who face risk to their livelihoods, **human rights**, and **property and resource rights**. Special attention should be given to indigenous and tribal peoples, women and other vulnerable groups...”[Guideline 1, 2nd bullet]
- Apply **Strategic Impact Assessment** for environmental, social, health and cultural heritage issues upstream at the planning and options assessment stage for ... “recognising the rights of stakeholders and assessing risks” [Guideline 4]
- **Project-level impact assessment** should be carried out in **two stages**: “...the first is a **scoping phase**, including full public participation that identified key issues of concern and defines the terms of reference for the second, **assessment phase** [Guideline 5, 1st bullet]
- Impact assessment “...should include **Environmental Impact Assessment**, a **Social Impact Assessment**, a **Health Impact Assessment** and **Cultural Heritage Impact Assessment**. The assessments should be sufficiently detailed to provide a **pre-project baseline** against which post-project monitoring results can be compared [Guideline 5, 4th bullet, Guidelines 14,15,16,17].
- Use Multi-Criteria Analysis (MCA) to **assess options** in a step-wise process that involves the discussion of alternative options in a stakeholder forum and with the public [Guideline 6]
- Use a **poverty risk assessment** and **Impoverishment Risk Analysis** to quantify and assess financial, social and environmental impacts and inform the overall project impact assessment and options assessment processes[Guidelines 9,10, 11,18]

Free and prior informed consent:

- “Decisions on projects affecting indigenous and tribal peoples are guided by their **free, prior and informed consent** achieved through formal and informal representative bodies” [Ch 8, principle 1.4]
- Free and prior informed consent... “involves a continuous, iterative process of communication and negotiation spanning the entire planning and project cycles. Progress to each stage in the cycle – **options assessment**...and selection of preferred options... – should be guided by the **agreement** of the potentially affected indigenous and tribal peoples” [Guideline 3, 1st para]

Participation and accountability mechanisms:

- “Effective participation in a stakeholder forum must be facilitated through timely access to information and legal and other necessary support. This is particularly the case with indigenous and tribal peoples...” [Guideline 1, penultimate para]
- “Negotiations should result in **demonstrable public acceptance** of binding and implementable agreements and in the necessary institutional arrangements for monitoring compliance and redressing grievances” [Guideline 2, first para]
- “Adequate time is allowed for stakeholders to assess, consult and participate” [Guideline 2, 3rd bullet]
- Stakeholders should “...agree on the appropriate *structures and processes* for decision-making, the required *mechanisms for dispute resolution* (including any third party involvement)...” [Guideline 2, 8th bullet]
- “Guarantee access to all relevant information to the stakeholder forum in an appropriate language”;
- “Public hearings may be held at each stage of the options assessment process” [Guideline 7, step 6.]
- A **compliance plan** is prepared for each project “...prior to commencement...specifying binding arrangements for project-specific technical, social and environmental commitments...” [Ch 8, principle 6.2]

Compensation:

- “All recognised adversely affected people negotiate **mutually agreed**, formal and legally enforceable mitigation, resettlement and development entitlements” [Ch 8, principle 5.3]
- “Adversely affected peoples are recognised as first among beneficiaries of the project. Mutually agreed and legally protected **benefit sharing mechanisms** are negotiated to ensure implementation.” [Ch 8, principle 5.4]

a: “A New Policy Framework” and “A Set of Guidelines for Good Practice” at pages 213-307 in WCD (2000) *Dams and Development: a new framework for decision making* Earthscan, London and Sterling

2.0 Multilateral Development Agencies

This section assesses the policies and activities of 14 multilateral agencies as they relate to indigenous peoples and development. In cases where an agency possesses a dedicated policy on indigenous peoples, the review identifies the strengths and weaknesses of the policy provisions as well as the institutional framework for their implementation. In cases where no specific policy exists, a summary evaluation is made of general agency policy and development operations that affect indigenous peoples.

2.1 European Union (EU) and European Commission (EC)

European commitment to uphold indigenous peoples' rights began to strengthen in the early 1990s and was clearly affirmed in European Parliament Resolution A3-0059/94 in 1994 in which the Parliament officially recognised UN standards on the rights of indigenous peoples in development.²⁹ By 1998, the European community had enshrined its progressive position on indigenous peoples and overseas development co-operation in two related policy documents: a fairly detailed 16-page EC "Working Document" endorsed by the EU Council in May 1998 and a short EU Council Resolution passed in November 1998, which affirms the political commitment of Member States' to support indigenous peoples in European development co-operation (Boxes 7 and 8). The Working Document was developed in consultation with indigenous peoples' organisations. As well as incorporating indigenous recommendations, the standards and principles in policy are based on international instruments relating to human rights, environment and development and also on European treaties and conventions relating to development co-operation.

Strengths:

- Provisions and key principles are based on progressive existing and emergent international standards, including the Draft UN Declaration on the Rights of Indigenous Peoples;
- Key elements are based on recommendations made by indigenous peoples themselves (e.g., territorial rights, "right to say no"; gender, intellectual property etc);
- Recognises the right of free, prior informed consent;
- Accepts that indigenous peoples must be compensated for harm caused by failed development interventions;
- Calls for participation of indigenous peoples in project monitoring;
- Promotes country-level action and support for participation of indigenous peoples in development of national plans relating to natural resources, such as National Biodiversity Strategies and Action Plans (NBSAPs);
- Recognises the need for "culturally appropriate" consultation;
- Focuses on identifying indigenous peoples' own priorities for development;
- Has already been effective in promoting important benchmarks in other related EC guidelines on overseas aid – such as requirements to secure land ownership for indigenous and local communities and the prohibition of eviction of indigenous communities in any EC aid to forestry and conservation projects (see below)

²⁹ Resolution A3-0059/94 in Official Journal of the European Community No.C61/60.

BOX 7: European Union (EU)

Title of policy: *Council of the European Union Resolution of 30 November 1998 “Indigenous Peoples within the framework of the development co-operation of the Community and the Member States”* (November 1998)

Available at: http://europa.eu.int/comm/external_relations/human_rights/ip/res98.pdf

Standards source: Maastricht Treaty; Draft UN Declaration on the Rights of Indigenous Peoples and other international instruments on the rights of indigenous peoples;

Approach: Self-development; partnerships; capacity-building

Some key provisions

International standards:

- > “...takes note of the international instruments addressing indigenous peoples, in particular the UN Resolution on the International Decade of the World's Indigenous People, the 1992 Rio Declaration, together with the Convention on Biological Diversity, the 1993 Vienna Declaration and the ILO Convention 169 on Indigenous and Tribal Peoples” [para. 1].
- > “...reiterates the political will of the EU and its Member States to participate actively in the initiatives in the framework of the CBD for supporting local and indigenous peoples in their contribution to the conservation and sustainable use of biological diversity.” [para. 4]

Self-development:

- > “...notes in particular: ... that indigenous peoples have the right to choose their own development paths, which includes the right to object to projects, in particular in their traditional areas. This includes compensation where projects negatively affect the livelihoods of indigenous peoples” [para.5 – emphasis added]
- > “...acknowledges that the development cooperation should contribute to enhancing the right and capacity of indigenous peoples to their "self-development"..." [para. 6]

Participation:

- > Respect for the right to self-development “...implies integrating the concern for indigenous peoples as a cross-cutting aspect at all levels of development cooperation, including policy dialogue with partner countries and enhancing the capacities of indigenous peoples' organisations to take an effective part in the planning and implementation of development programmes” [para. 6]

Guidance or instructions to European Commission and Member States:

- > “...invites the Commission to *develop further* with Member States and in cooperation with indigenous peoples the *comprehensive policy* outlined in the Commission's Working Paper, with particular emphasis on practical ways to implement this policy. The primary focus should be on integrating the concern for indigenous peoples in existing procedures, guidelines and manuals for development cooperation...” [para. 9] (emphasis added)
- > “...the Commission and Member States should as soon as possible examine the means to produce specific practical procedures for its aid practitioners, illustrating key issues to be considered in order to ensure that the particular needs of indigenous peoples are fully taken into account throughout the project cycle, drawing on the tools used in the participatory approach to development and social impact assessments” [para. 10]
- > “...the measures proposed should be discussed with indigenous peoples...” [para. 10]
- > The “...expert group on social development should examine the feasibility of these measures, review the status of implementation of the action plan outlined in the working document on a regular basis and suggest, where appropriate, further action to implement the policy guidance on cooperation with and support of indigenous peoples ...and report back to the Council with a review of progress...” [paras. 10 and 11]

Type of standards: A policy statement of general principles and affirmation of political commitment. The policy is not binding on Member States. Nor is it mandatory for EC staff as no comprehensive internal operational policy has yet been developed.

Accountability mechanism: No formal mechanism. Concerns can be raised with “focal points” in EC Directorates and delegations. See http://europa.eu.int/comm/external_relations/human_rights/ip/index.htm . In theory, a complaint could be indirectly raised in relation to *other* related EC mandatory standards via the European Ombudsman (<http://www.euro-ombudsman.eu.int/home/en/default.htm>)

BOX 8: European Union (EU)/European Commission (EC)

Title of policy: *Working Document of the Commission on support for indigenous peoples in the development co-operation of the Community and the Member States* (May 1998)

Available at: http://europa.eu.int/comm/external_relations/human_rights/ip/work_doc98.pdf

Standards source: International instruments on the rights of indigenous peoples;

Approach: Self-development; human rights; partnerships; capacity-building; donor co-ordination;

Some key provisions

Policy scope

- > Adopts self-identification as a fundamental criterion for identification of indigenous peoples.

International standards:

- > Recognises that "...The UN Declaration on Human Rights, the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, constitute the basic framework for the definition of indigenous peoples' rights" [III.3] and takes account of other international standards including ILO Convention 169, the 1992 Rio Declaration, Agenda 21, the Draft UN Declaration on the Rights of Indigenous Peoples and the Draft American Declaration, among others [III.3]

Land and resource rights:

- > The overall objective of development co-operation should be to: "Enhance indigenous peoples' territorial rights and capacity for sustainable management of biological resources" [XI. 2nd para, 2nd bullet]

Self-development:

- > "Enhance indigenous peoples' right and capacity to control their own social, economic and cultural development" [XI. 2nd para., 1st bullet]

Participation:

- > "The full and free participation of indigenous peoples in all stages of the project cycle is regarded as fundamental. Participation must include elements such as prior consultation with indigenous peoples, their consent to envisaged activities, their control over activities affecting their lives and land and the identification of their own priorities for development" [X. 6th para.]. The need to recognise the principle of free and informed consent is reiterated in section XI. 7th para, 8th bullet.

Intellectual Property:

- > "Enhance the protection of indigenous peoples' knowledge, innovations and practices, *inter alia* through intellectual property rights, and their control over their genetic resources" [XI. 3rd para, 3rd bullet].

Guidance or instructions to European Commission and donor agencies of Member States:

- > "Include indigenous peoples' issues in the policy dialogue with recipient countries, based on the existing international framework. The dialogue should focus on the recognition and reflection of indigenous peoples' rights and needs in national legislation and institutions" [XI. 3rd para, 1st bullet]
- > "Projects affecting indigenous peoples should subsequently undergo a social impact assessment, including socio-cultural profiles of the concerned group and assessment of potential impacts, risks, options and alternatives" [X. 4th para.]
- > "...attempt to work through existing structures and institutions in indigenous societies..." [X. 5th para.]
- > "...support the participation of indigenous peoples in environmental negotiations and strategies internationally and nationally, *inter alia* in the development of national biodiversity strategies" [XI. 3rd para, 4th bullet]
- > Develop methods and procedures to integrate indigenous peoples' concerns in social assessments [XI.5th para]
- > Put in place monitoring systems "with participation of indigenous peoples" [XI. 5th para., 5th bullet]
- > Establish consultation procedures, appropriate to the indigenous notion of time and decision-making [XI]
- > Identify indigenous peoples' own priorities for the development process [XI. 7th para., 6th bullet]
- > Establish focal points in the EC, including delegations, and the Member States" [XI, 6th para, 1st bullet]

Type of standards: The policy is not binding on EC staff nor Member States, though some principles now occur in related EC Regulations.

Implementation review: A summary desk-review was carried out in 2002 and is available at: http://europa.eu.int/comm/external_relations/human_rights/doc/com02_291_en.pdf. The review focuses on mainstreaming of the policy into EC manuals and regulations during 1998-2000.

Weaknesses

- Incomplete instrument that requires further development of a “comprehensive” policy on procedures, standards, methods and appropriate practice for on-the-ground implementation of policy principles in development operations;
- Lacks mandatory and binding standards;
- EU Resolution fails to capture some key elements in the EC Working Document (e.g., on territorial rights, human rights and intellectual property);
- Many observations and suggestions, but few clear rules or preconditions that must be complied with before the EC releases funds for development aid;
- Lacks detailed operational guidance for EC managers and delegation staff;
- Not backed up by institutional mechanisms to implement the policy;
- Not linked to formal accountability mechanisms at the country and field level.

EU and EC activities and programmes affecting indigenous peoples:

The member states of the EU together make up the largest global donor to overseas development aid. The European Commission is the world’s second biggest international donor, providing 9 billion dollars of grant aid for development co-operation in 2000.³⁰ The institutional structure for EC development co-operation is complicated with roles and responsibilities spread across six different Directorates Generals (DGs). These Directorates include DG External Affairs³¹ and DG Development.³² DG External Affairs is responsible for the human rights budget line and for aid issues relating to Latin America, Asia, China, the former USSR, Australia and Canada. DG Development is responsible for sectoral policies and for aid to countries in the Africa, Caribbean and Pacific regions (ACP), while DG Trade³³ deals with trade negotiations and agreements with both ACP and Asian and Latin American (ALA) countries. EuropeAid³⁴ is a new office set up by the EC in 2001 to oversee the whole external aid programme. European development co-operation for specific countries is based on Country Strategy Papers (CSP), which are supposed to be developed in a participatory manner.³⁵ Aid is also distributed via the European Development Fund for countries in the Africa, Caribbean and Pacific (ACP) regions and via different regional budget lines such as the Asia and Latin America (ALA) Budget line. There are also several sectoral budget lines. These include:

- B7-6200: Environment in Developing Countries³⁶
- B7-70: European Initiative for Democracy and Human Rights³⁷
- B7-6000: Co-financing EU NGOs
- B7-6002: Decentralised Co-operation
- B7-10: Co-operation with ACP countries
- B7-30: Co-operations with Asian Developing Countries
- B7-31: Co-operation with Latin American countries
- B7-600: Forests
- B7-22: Integration of gender issues in development

³⁰ <http://www.fern.org/pages/aid/intro.html>

³¹ http://europa.eu.int/comm/dgs/external_relations/index_en.htm

³² http://europa.eu.int/comm/dgs/development/index_en.htm

³³ http://trade-info.cec.eu.int/europa/index_en.php

³⁴ http://europa.eu.int/comm/europeaid/index_en.htm

³⁵ http://europa.eu.int/comm/development/strat_papers/index_country_fr.htm

³⁶ <http://europa.eu.int/comm/development/sector/environment/b7-6200budgetline/>

³⁷ http://europa.eu.int/comm/europeaid/projects/eidhr/eidhr_en.htm

Some of these budget lines identify indigenous peoples as potential beneficiaries under EC support to activities that promote human rights. In theory, indigenous peoples' organisations are eligible to apply for funding, though in practice the large sums of money involved require partnerships with NGOs.³⁸ Although there are useful budget lines in support of rights holders and civil society, recent independent NGO studies of EC aid have found that a great deal of money is still channelled to large infrastructure and transport projects and that social and environmental performance in EC aid operations remains of poor quality.³⁹

Implementation reviews:

In 1995, the European Commission contracted the European Alliance with Indigenous Peoples to carry out an independent review of the policies and actions of European Union countries and European development aid relating to indigenous peoples. The review, which included a summary assessment of EC-aid projects targeting indigenous peoples in India, the Central African Republic, Ecuador and Bolivia, found a number of common problems in EC aid projects that generated a series of recommendations for improved development effectiveness.

As well as urging the Union to adopt a specific policy to deal with indigenous peoples in its development co-operation, the reviews also recommended:

- Improved training of project staff and implementing agencies in indigenous issues;
- Prior assessments of legal and institutional frameworks in the recipient country;
- Proactive information dissemination to indigenous communities and their organisations;
- Development and adoption of *operational guidelines* on the procedural steps required to implement standards in policies and international agreements endorsed by the EU/EC;
- Prior social impact and screening procedures to assess the potential affect of projects on indigenous peoples and their environment;
- Include a participation plan and cultural profile for each proposed project.⁴⁰

In the late 1990s and in the early part of the new millennium, further independent assessments by NGOs have showed that EC aid projects continue to be of variable and deficient quality, which has resulted in negative impacts on local communities and the environment. Common problems included a lack of information on EC projects, sub-standard or non-existent public consultation, failure to comply with Environmental Assessment requirements and inadequate monitoring and evaluation procedures.⁴¹

³⁸ For a guide to available EC funds and possible openings for indigenous people's proposals, see Fern (2001) *Funding possibilities for indigenous peoples* Fern briefing note, November 2001 - <http://www.fern.org/pubs/briefs/fundops2.pdf>

³⁹ See, for example, Fern (2002) *Forests at the Edge: a review of EC aid spending* Fern – The EC Forest Platform, Moreton-in-Marsh and Brussels – <http://www.fern.org/pubs/reports/cspedge.pdf>

⁴⁰ Trio, W (1995) *Indigenous Peoples Participation in Sustainable Development: implementing Agenda 21* An independent study by the European Alliance with Indigenous Peoples, Brussels

⁴¹ See, for example, Rainforest Foundation (1998) *Out of Commission: the environmental and social impact of European development funding in tropical forest areas* RF-UK, London

In 2001 and early 2002, the EC carried out its own internal review of progress in implementing the 1998 policy on support for indigenous peoples (1998-2000) in accordance with requirements under the 1998 Resolution (paragraph 11).⁴² The review did not examine in detail specific projects and only made summary comments on five projects targeting indigenous peoples. The review notes, however, that between 1998 and 2000 the EC provided 21.9 million Euros of aid for projects directly or indirectly benefiting indigenous peoples. The report admits that the review team was unable to measure practical progress and development impacts on indigenous peoples in EC aid operations due to the lack of an adequate project database and the absence of indicators for evaluating the quality of policy implementation.

Instead of evaluating impacts, the review therefore examined the extent to which the principles of the EU policy had been integrated into EC regulations and operational guidelines. It found that key standards relating to development and indigenous peoples' have been incorporated into a few EC operational documents and that more guidelines will be included in its forthcoming revised "Environmental Integration Manual".⁴³

The review highlighted the EC's "Guidelines concerning forests in sustainable development" which contain detailed guidance on Social Impact Analysis (SIA) procedures and includes a fundamental benchmark that prohibits EC financing for the relocation of indigenous communities with the unequivocal statement that: "***The EC will not provide funding support for evictions of indigenous peoples***" (emphasis added).⁴⁴ The same guidelines on forests also include important principles on land tenure:

"All activities in the framework of Forest Sector Development Co-operation have to respect and take into account local customary rights and ownership of land and resources. They should seek to improve the power, mandate and legal security of local people with respect to their customary, usufruct and landownership rights" [Principle 3: Respecting Customary Rights and Ownership of Land and Resources]⁴⁵

The EC reviewers also noted that indigenous rights have been promoted by EU delegations to intergovernmental fora such as the CBD and are captured in the May 2001 EC Communication on Human Rights which contains a section on combating discrimination against indigenous peoples.⁴⁶

⁴² European Commission (2002) *Report of the Commission to the Council: review of progress of working with indigenous peoples* COM (2002) 291 Final, 11.6.2002, EC Brussels. http://europa.eu.int/comm/external_relations/human_rights/doc/com02_291_en.pdf

⁴³ The regulations include Council Regulation (EC) No. 2493/2000 of 7 November 2000, OJ L 288, 15/11/2000; Council Regulation (EC) No. 1658/98 of the Council of 17 July 1998, Council Regulations 975/99 and 976/99 of 29 April 1999, OJ L 120 of 8 May 1999

⁴⁴ EC (2001) *Guidelines for Forest Sector Development Co-operation: forests in sustainable development, Volume I, Strategic Approach, EC, Cat. No. CF-62-96-001-C* at Section 3 *People and Forests in Sustainable Development* - http://europa.eu.int/comm/development/forests/en/en3_t02.htm

⁴⁵ http://europa.eu.int/comm/development/forests/en/en23_pp.htm#en203

⁴⁶ EC (2001) *Communication from the Commission to the Council and the European Parliament: The EU's role in promoting human rights and democratisation in third countries* COM(2001) 252 final, Brussels, 8 May 2001.

Also identified as progress in implementing the policy are references to indigenous peoples in bilateral agreements between the EU and Mexico and in the Framework Agreement on Cooperation between the EEC and Latin American countries, which emphasises the need to protect the rights of indigenous peoples. The EC review team also stressed the establishment of “contact points” on indigenous peoples in different DGs in Brussels (section 4.0).

The final conclusions and recommendations of the EC review are disappointingly vague and weak. However, they do recommend the need for a database in the Commission on indigenous peoples involved in or affected by its aid programme and the need to develop impact indicators and monitoring mechanisms. The necessity for training of delegation staff in human rights and indigenous issues is also recognised, but the need to establish specific focal points in the country delegations is not acknowledged.⁴⁷

As part of its review, the EC team did seek the views of indigenous peoples on EC development aid by its joint financing of seven case studies undertaken by indigenous peoples’ organisations affected by EC-assisted development projects. These studies were commissioned and overseen by the International Alliance of Indigenous-Tribal Peoples of the Tropical Forests and Rainforest Foundation-UK.

The Commission also jointly sponsored and took part in a workshop where the findings of the case studies were discussed with indigenous representatives, NGOs and EC officials in June 2002. Regrettably, the workshop took place *after* the EC had already completed its written review. The case studies and the workshop discussion generated more concrete recommendations for improving policy implementation. Namely:

- ❑ Develop and adopt a comprehensive operational policy on indigenous peoples as a matter of priority, which applies to indigenous peoples in all parts of the world;
- ❑ Make land rights and security of tenure a central aspect of the EU and EC policy towards indigenous peoples;
- ❑ Establish appropriate institutions, mechanisms and procedures for the practical implementation of the principles set out in the policy, i.e. mechanisms for:
 - timely identification of indigenous peoples and their priorities
 - screening projects for potential impacts on indigenous communities;
 - collecting baseline data;
 - providing indigenous peoples with a means of redress and compensation;
 - allowing indigenous peoples to reject proposals that do not meet with their consent;
 - disseminating information to IPOs and their local communities;

[Continued]

⁴⁷ EC (2002) at page 18.

- ❑ Stronger integration and participation of indigenous peoples in CSP processes;
- ❑ Provide detailed guidance to EC staff on policy implementation;
- ❑ Develop innovative performance-based monitoring and evaluation indicators in a collaborative way with indigenous peoples;
- ❑ Institutionalise the dialogue process between indigenous peoples and the European Community;
- ❑ Provide training for delegation and country staff on indigenous issues and the implementation of the 1998 policy;
- ❑ Support and ratify the Draft UN Declaration on the Rights of Indigenous Peoples.⁴⁸

In response to the recommendations of the EC review and the indigenous peoples' and NGO workshop, the EU Council has invited the Commission to:

- (i) continue further implementation of the 1998 policy
- (ii) undertake follow-up dialogue with indigenous peoples
- (iii) consider supporting UN mechanisms
- (iv) train delegation personnel in human rights and indigenous issues
- (v) take steps to “achieve more participatory processes” at the country level
- (vi) integrate indigenous peoples' concerns into dialogue with partner countries
- (vii) include analysis of indigenous issues in the CSP process
- (viii) initiate a number of pilot projects to develop methods and procedures for increased participation of indigenous peoples throughout the project cycle
- (ix) report on progress in the implementation of the 1998 policy in the Annual reports on the Community's External Assistance and in the EU Annual Report on Human Rights.⁴⁹

In late 2002, the European Parliament again affirmed its support for the rights of indigenous peoples by calling on all member states to follow the example of Denmark and the Netherlands in ratifying ILO Convention 169.⁵⁰ Parliament's call for a demonstration of solidarity and commitment to indigenous peoples' rights through the ratification of ILO Convention 169 has been welcomed by the indigenous movement.

However, there is a general disappointment that the Commission has not responded directly to the key indigenous recommendation that the EC should develop a 'comprehensive' operational policy for EC staff. Indigenous peoples' organisations and support NGOs have also requested that European Commission staff enable indigenous organisations to participate in and contribute directly to the CSP review process in 2003-04.

⁴⁸ Indigenous Peoples' Declaration “Indigenous Preparatory Meeting”, 16-17 June 2002, Brussels; International Alliance, RF-UK (2002) “Conclusions and Recommendations” *Speaking Out: indigenous views of development and the EU implementation of the EU policy on Indigenous Peoples*; http://www.rainforestfoundationuk.org/Conference/docs%20in%20English/concl_recommen_eng.doc See, Counsell, S (2002) “Overview: towards general conclusions and recommendations” http://www.rainforestfoundationuk.org/Conference/docs%20in%20English/Overview%20paper_eng.doc

⁴⁹ European Council (2002) *Indigenous peoples – Council conclusions* at pages IX-XI in *General Affairs and External Relations 2463rd Council Meeting*, Brussels, 18 November 2002 (doc.14184/02 Presse 351), Brussels

⁵⁰ *European Parliament resolution on the situation concerning basic rights in the European Union (2001/2014(INI))* - A5-0451/2002, Brussels at paragraph 87.

In early 2003, enquiries direct to EC policy makers also indicate that the Commission still has no definite plans to formulate a ‘comprehensive’ operational policy. More disconcerting still has been the written confirmation by the European Commissioner for External relations, Poul Nielson, that the Commission is under no obligation to consult with indigenous peoples regarding its CSP-review process.⁵¹ Lawyers specialising in EU law affirm that the resolution and working document are not binding on member states and are not mandatory for EC staff and delegations.

2.2 World Bank Group

In response to severe international criticism of the destructive impacts of its projects on indigenous peoples during the 1960s and 1970s,⁵² the World Bank was the first multilateral development bank to adopt a policy on “tribal” peoples in 1982. Known as Operational Manual Statement 2.34 (OMS 2.34), this policy required Bank staff to include measures to protect affected peoples’ land rights, health, cultural integrity and ensure their participation in project planning and implementation.

Despite the adoption of the 1982 policy, the severe impact of World Bank projects on indigenous peoples continued,⁵³ but the World Bank denied major problems until 1987 when it’s President finally admitted that many of World Bank projects had failed to take into account social and environmental issues. New staff with social science expertise were recruited and a review was undertaken to establish the degree to which staff were adhering to the ‘tribal peoples’ policy. This early internal review found that out of a small sample of 33 World Bank projects thought to be affecting indigenous peoples since the policy was adopted, only 15 had observed the policy at all - *less than half*. Moreover, of those 15 *only 2 projects had observed all four key elements of the World Bank’s policy*. The review also found that land demarcation elements in indigenous project components were “severely delayed or out of pace with the progress of the overall project”.⁵⁴

As a result of this review and extensive consultations *inside* the World Bank, a new policy was adopted in 1991 with aim of giving clearer guidance to staff. This policy, titled ‘Indigenous Peoples’ and referred to as ‘Operational Directive 4.20’ (Box 9) is currently being revised, but remains in force at the beginning of 2003. OD4.20 is one of ten so-called “safeguard” polices that are supposed to protect the environment and vulnerable social groups from the adverse impacts of Bank-financed operations. The policy aims to ensure that Bank loan operations ‘do no harm’ or ‘minimise harm’. The policy approach is one of *mitigation, participation and benefit sharing*. At the time the OD4.20 was developed, indigenous organisations complained that OD4.20 had been developed and finalised *without* indigenous participation. Indigenous organisations such as COICA had made clear recommendations to the World Bank in 1990 demanding a policy which included:

⁵¹ Letter from Commissioner Poul Nielson to Saskia Ozinga, FERN, 7 February 2003.

⁵² Davis (1977), Bello *et al* (1982), Drucker (1984), Colchester (1986a,b,c), Rich (1986;1994), Treece (1987) and Albert (1990).

⁵³ Colchester 1986 a,b,c; Treece 1987; Morse and Berger 1992; Rich 1986, 1994.

⁵⁴ World Bank 1987; Davis 1993:16

- Recognition of indigenous rights as set out in international law
- Direct consultations with indigenous peoples in the elaboration of the policy
- No development projects in indigenous areas without the informed consent of the peoples affected
- Participation of the indigenous organisations, which represent the affected peoples, throughout the full project cycle
- Establishment of tripartite commissions, including governments, funders and the affected peoples, to oversee project implementation
- Prioritisation of indigenous development alternatives.⁵⁵

Although the 1991 policy has significant deficiencies such as its failure to make explicit reference to ILO Convention 169 and its disregard for the right to prior informed consent, most indigenous commentators agree that, if implemented properly, it can help safeguard the rights of indigenous communities affected by World Bank projects.

Strengths of OD4.20:

- Contains detailed operational guidelines which are binding on the Bank staff and project managers
- Includes benchmarks to establish circumstances in which the Bank will not finance projects
- Requires borrower government commitment to the policy
- Specifies the need for legal framework analysis
- Includes requirements for detailed field baseline studies
- Requires mechanisms to ensure participation in the full project cycle
- Contains provisions to secure the legal recognition of indigenous peoples' land tenure and resource rights;
- Includes sub-components in health care, education, legal assistance and institution building
- Provides for capacity-building of the government agency dealing with indigenous peoples
- Establishes a clear schedule for fitting actions related to indigenous peoples into the overall project, with a clear and adequate budget
- Contracts and disbursements are conditional on government compliance with these measures.
- Specifies lines of responsibility for implementing the policy

Weaknesses of OD4.20:

- fails to meet international standards on the rights of indigenous peoples, such as those set out in ILO Convention 169
- falls behind international standards as they have developed since 1991
- does not adopt a rights-based approach
- disregards the right to free and prior informed consent
- fails to prohibit forced relocation
- contains unclear language on land tenure
- does not apply to the Bank's adjustment and programmatic lending
- no explicit links to formal and readily accessible accountability mechanism
- contains no provision for redress, dispute resolution and compensation

⁵⁵ IWGIA Yearbook 1990.

Implementation reviews:

Although OD4.20 contains useful requirements, unfortunately, the quality of implementation of the policy in the 1990s was patchy and sometimes poor. A 1999 Bank study of the application of the 1991 Indigenous Peoples policy in Latin America between 1992 and 1997 found that more than one third of projects affecting indigenous peoples had failed to include an Indigenous Peoples Component or Indigenous Peoples Development Plan (IPDP) as required by OD4.20 (para.13).⁵⁶

Independent case studies of World Bank projects in Latin America, Africa and Asia carried out by indigenous peoples themselves have also found compliance with OD4.20 is often weak and sometimes highly unsatisfactory, especially with regard to the critical needs for indigenous peoples' participation and secure land rights. Compliance is often highly variable both within projects and across projects in the same country. Repeated patterns of poor compliance include:

- No harmonisation of borrower policies with international standards and Bank policies
- Baseline studies superficial or absent in project preparation
- Required legal reforms omitted
- Procedural oversights in appraisal
- Indigenous peoples' land and resource rights not secured
- Required Indigenous Peoples Development Plan (IPDP) omitted
- Participation deficient
- Ineffective supervision
- Corrective actions late or absent
- Disinclination to enforce loan agreements.⁵⁷

Poor compliance means that indigenous peoples still sometimes find themselves worse off after Bank projects. Even apparently "harmless" loans and so called "do good" projects targetting indigenous peoples can cause serious harm where social and environmental policies are not applied properly. For example, if land titling projects are not designed from the outset with indigenous organizations, there is a risk that the project or programme may not properly secure the full extent of traditional territories.⁵⁸ Likewise, conservation projects that fund the establishment of Protected Areas can curtail the traditional resource rights of indigenous communities. In the worst cases conservation projects can result in forced relocation.⁵⁹

⁵⁶ Swartz K. J. and Uquillas J. E. (1999), *Aplicación de la Política del Banco sobre las Poblaciones Indígenas (OD 4.20) en América Latina (1992-97)*, Oficina Regional de América Latina y el Caribe, The World Bank, <http://www.worldbank.org>

⁵⁷ Griffiths, T and Colchester M (2000) *Indigenous Peoples, Forests and the World Bank* FPP, Moreton-in-Marsh. See also Fox, J and Gershman J (2000) "The World Bank and social capital: lessons from ten rural development projects in the Phillipines and Mexico" *Policy Sciences* 33(2000):399-419

⁵⁸ Griffiths (1999), (2001). See also Leonard and Narintarakul Na Ayutthya (2002).

⁵⁹ Griffiths and Colchester (2000), Griffiths (2002).

BOX 9: World Bank

Title of policy: *Operational Directive 4.20: Indigenous Peoples* (September 1991)

<http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/toc2/0F7D6F3F04DD70398525672C007D08ED?OpenDocument>

Standards source: Not explicit.

Approach: Screening; baseline studies; participation; mitigation; benefit sharing.

Some key provisions [emphasis added]:

Policy scope and coverage:

- > Applies fully to investment projects and technical assistance loans and *partially* to Economic and Sector Work. It does not apply to adjustment or programmatic loans [paras. 1; 10; 11; 12]
- > Broad criteria for application of the policy to include marginal and vulnerable groups [paras. 2; 3 + 5]

Baseline studies and impact assessments:

- > Projects...should be carefully screened... issues related to indigenous peoples are commonly identified through the environmental assessment or social impact assessment processes and appropriate measures should be taken under environmental mitigation actions (see OD 4.01, Environmental Assessment). [para. 10]
- > The indigenous peoples development plan (IPDP) "...should contain an assessment of ...the legal status of the groups..." [para. 15a]
- > Field baseline studies are included in an IPDP or an indigenous peoples project component [para 15b]

Policy dialogue with borrower countries:

- > "...the Bank will not appraise projects until suitable plans are developed by the borrower and reviewed by the Bank" [para. 9]
- > "Issues concerning indigenous peoples should be addressed explicitly in sector and subsector work and brought into the Bank-country dialogue..." [para.11]
- > Borrower commitment for implementing the IPDP "...should be reflected in the loan documents; legal provisions should provide Bank staff with clear benchmarks that can be monitored during supervision." [para. 20]

Land and resource rights:

- > "Special action is required where Bank investments affect indigenous peoples, tribes, ethnic minorities, or other groups whose social and economic status restricts their capacity to assert their interests and rights in land and other productive resources" [para. 2]
- > "When local legislation needs strengthening, the Bank should offer to advise and assist the borrower in establishing legal recognition of the customary or traditional land tenure systems of indigenous peoples... arrangements should be implemented to grant long-term, renewable rights of custodianship and use to indigenous peoples. These steps should be taken before the initiation of other planning steps that may be contingent on recognized land titles." [para 15 c]
- > "...In a project that involves the land rights of indigenous peoples, the Bank should work with the borrower to clarify the steps needed for putting land tenure on a regular footing as early as possible..." [para. 17]

Benefit sharing and mitigation:

- > "...a full range of positive actions by the borrower must ensure that indigenous people benefit from development investments" [para. 9]
- > "For an investment project that affects indigenous peoples, the borrower should prepare an *indigenous peoples development plan* that is consistent with the Bank's policy. *Any* project that affects indigenous peoples is expected to include components or provisions that incorporate such a plan..." [para. 13]

Participation and accountability:

- > "...issues pertaining to indigenous peoples must be based on the *informed participation* of the indigenous people themselves. Thus, identifying local preferences through direct consultation, incorporation of indigenous knowledge into project approaches...are core activities for any project that affects indigenous peoples and their rights to natural and economic resources" [para. 8]

- > “The key step in project design is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project” [para 14a]
- > “Mechanisms should be devised and maintained for participation by indigenous people in decision making throughout project planning, implementation, and evaluation...” [para 15d]
- > “Components should include an implementation schedule with benchmarks by which progress can be measured at appropriate intervals” [para. 15g]
- > Monitoring by indigenous peoples’ own organisations is “encouraged by the Bank”. Monitoring “...reporting formats and schedules appropriate to the project’s needs should be established.” “...evaluation reports should be made available to the public.” [para.15h]
- > The plan should include detailed cost estimates for planned activities and investments. The estimates should be broken down into unit costs by project year and linked to a financing plan...” [para. 15i]

Instructions to Bank staff and project task managers:

Identification:

- > During project identification, the borrower should be informed of the Bank's policy for indigenous peoples [para 16]
- > Task managers should (i) “...ascertain the relevant government agencies, and their policies, procedures, programs, and plans for indigenous peoples affected by the proposed project”... (ii) “...initiate anthropological studies necessary to identify local needs and preferences” (iii) include indigenous peoples issues and the overall project strategy in the Initial Executive Project Summary [para 16]

Preparation:

- > “If it is agreed in the IEPS meeting that special action is needed, the indigenous peoples development plan or project component should be developed during project preparation...” [para. 17]

Appraisal:

- > “The plan for the development component for indigenous peoples should be submitted to the Bank along with the project's overall feasibility report, prior to project appraisal. Appraisal should assess the adequacy of the plan...Appraisal teams should be satisfied that indigenous people have participated meaningfully in the development of the plan...It is particularly important to appraise proposals for regularizing land access and use” [para.18]
- > “The borrower's commitments for implementing the indigenous peoples development plan should be reflected in the loan documents; legal provisions should provide Bank staff with clear benchmarks that can be monitored during supervision...” [para 20]
- > The project appraisal document (PAD) “...and the Memorandum and Recommendation of the President should summarize the plan or project provisions” [para. 20]

Implementation:

- > Supervision planning should make provisions for...site visits by task managers and specialists...Midterm and final evaluations should assess progress and recommend corrective actions when necessary. [para. 19]

Type of standards: Internal *binding operational rules* that set out minimum standards and procedures that must be followed by Bank staff in all projects covered by the policy. The policy also contains non-mandatory provisions containing optional guidance for staff and project managers.

Accountability mechanism: Informally through project managers and evaluation teams. Through local monitoring procedures if these exist. Formally through the World Bank Inspection Panel. <http://wbln0018.worldbank.org/ipn/ipnweb.nsf/> (for IBRD and IDA loans). See also <http://www.cao-ombudsman.org/ev.php> (For IFC and MIGA loans).

Implementation reviews: An internal desk-based review on implementation in Latin America was carried out in 1997 – see Swartz K. J. and Uquillas J. E. (1999). After much pressure from indigenous peoples and NGOs, in 2001-02, the Bank’s semi-independent Operations Evaluation Department (OED) carried out a more comprehensive implementation review involving a desk-based study of 234 projects and participatory field evaluation of 15 projects in twelve countries where OD4.20 was triggered in Bank loan operations between 1992 and 2001. The results of this second phase of the review are due in April 2003. See <http://www.worldbank.org/oed/indigenouspeople/>

Both Bank and independent studies show that poor quality implementation is often due to institutional and incentive structures within the World Bank Group which remain geared towards moving money to meet annual loan targets.⁶⁰ Acceptable performance has also been hindered by the deficient allocation of funds to meet the “transaction costs” of planning and supervising projects. Compliance tends to be better in projects that target indigenous peoples. Case studies reveal that effective implementation of OD4.20 has been the result of long project preparation times, intensive staff inputs, willingness to pay unusually high transaction costs, strong borrower commitments to reform and genuinely participatory decision-making both in project preparation and implementation. Examples of high quality implementation are found in the *Mexico Community Forestry Project* which included in-depth participatory social assessment and the *Natural Resource Management Project* in Colombia where a successful land titling programme for indigenous peoples and Afro-Colombians was supported by the Bank under complex and difficult local circumstances. Participants in the latter project report that its relative success was due to its inclusive procedures for participatory design, implementation and monitoring.⁶¹

OED implementation review (1992-2001)

In December 2002, the Bank’s semi-independent Operations Evaluation Department (OED) concluded a two-year review of the implementation of (OD4.20) over the period 1992-2001. This recent review has confirmed the variable patterns of policy implementation found by independent studies. The first (desk-based) phase of the review was published in January 2003, while the second phase is due to be published in April 2003. The Phase I report reveals that out of 89 closed projects that had affected indigenous peoples, only 62% had applied the OD and that just 12 projects (14%) had self-standing Indigenous Peoples Development Plans as required under OD4.20. The evaluation shows that only 22% of loan documents had included clauses on borrower commitment to implement OD4.20. The same review finds that the participation of indigenous peoples in decision-making in Bank projects affecting them was “low” and that just 20% of projects had included clear benchmarks for monitoring to measure impacts on indigenous communities.⁶²

Of particular interest to this assessment, is the finding that good overall implementation of the specific was associated with *improved poverty reduction impacts*. It is also noteworthy that projects which included and implemented self-standing indigenous peoples plans or components had better development impacts than those without such measures.⁶³

⁶⁰ Wapenhans W A (1992) *Effective Implementation: key to development impact* Portfolio Management Task Force, World Bank, Washington, DC; Rich, B (1990) “The Emperor’s New Clothes: the World Bank and environmental reform” *World Policy Journal*, Spring 1990:305-329

⁶¹ Ng’weno, B (2000) *On titling collective property, participation and natural resource management - implementing indigenous and Afro-Colombian demands: a review of bank experience in Colombia* unpublished document, World Bank, Washington, D.C., September 2000. It is important to note that since completion of the project, civil unrest and conflict have undermined land tenure security and caused land disputes in the project area.

⁶² Operations Evaluation Department – OED (2003) *Implementation of Operational Directive 4.20* at paragraphs 3.12, 3.1.3, 3.20, 3.6, 3.7, 4.2 etc. [http://lnweb18.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/472DE0AEA1BA73A085256CAD005CF102/\\$file/IP_evaluation.pdf](http://lnweb18.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/472DE0AEA1BA73A085256CAD005CF102/$file/IP_evaluation.pdf)

⁶³ Ibid. at paragraphs 4.1 and 4.2.

Bank policies, projects and programmes affecting indigenous peoples:

In recent years the World Bank has begun to develop and support specific ‘do good’ projects and programmes targeting indigenous peoples that have involved land titling, natural resource management, capacity building, education, health and poverty reduction initiatives.⁶⁴ Most of these targeted loans have been directed towards indigenous peoples in Latin America where Bank studies have confirmed that indigenous peoples suffer high levels of poverty – as defined by conventional poverty measures based on income and access to basic services.⁶⁵ These World Bank projects have applied an *ethnodevelopment* approach which aims to build on local indigenous aspirations and traditional social institutions.⁶⁶ These new approaches have brought mixed results and critics argue they causes divisions in national and local indigenous movements, fail to address the underlying structural causes of indigenous poverty and so far have not been very effective in addressing the policy and practical problems that undermine indigenous land and resource security.⁶⁷

Though not without problems such as the ones noted above, indigenous organisations acknowledge some of the Bank’s ethnodevelopment and natural resource management projects have brought benefits. However, indigenous organisations and civil society groups monitoring the World Bank point out that much of the Bank’s business continues to directly or indirectly promote unsustainable, top-down development based on foreign direct investment, export-led growth, structural adjustment and the industrial extraction of natural resources. They complain that these largely unaccountable development interventions continue to have severe negative consequences for indigenous peoples and their territories throughout the world.⁶⁸ Faced with the Bank’s shift towards increased adjustment and programmatic lending that now accounts for between one third and one half of its annual loan volume, indigenous peoples and civil society groups have in recent years called on the Bank to modify its safeguards to cover these operations to ensure effective involvement in macro-economic policy-making and respect for indigenous rights.

Ineffective accountability mechanisms:

Independent evaluations of the usefulness of the Inspection Panel have shown that while its has proved relatively successful in highlighting compliance problems, its centralised complaints procedure is cumbersome for grassroots communities and has so far shown limited capacity to stimulate adequate corrective actions to address local grievances.⁶⁹ Early evidence also suggests that the IFC and MIGA’s centralised Compliance Ombudsman Office (CAO) suffers similar problems given its very technical approach, its distant base in Washington and its reliance on infrequent field “missions”.

⁶⁴ For a list of current World Bank projects directly targeted at indigenous peoples, see: <http://lnweb18.worldbank.org/essd/essd.nsf/28354584d9d97c29852567cc00780e2a/529a277b1d68810d852567cc0077fad3?OpenDocument>

⁶⁵ Psacharopoulos and Patrinos (1994a,b). Poverty reduction programmes targeting indigenous peoples have been undertaken in Ecuador (1997-2001) and are ongoing in Bolivia. Both pilot projects and large scale poverty alleviation programmes are planned in Peru. See World Bank (1997; 2000; 2001) and Servindi (2002).

⁶⁶ On World Bank conceptual basis for ethno-development and its application in Bank portfolios, see Roper *et al* (1996), Partridge *et al* (1996) and Nieuwkoop and Uquillas (1999).

⁶⁷ See, for example Macas (2001), Assies *et al* (2001) and van den Berg (2002).

⁶⁸ Corpuz (1997); Treakle (1998); Gray (1998); Griffiths (1999); WRM (2000;2001); Tebtebba (2001).

⁶⁹ Fox, Clark and Treakle (nd).

Given these problems with existing accountability mechanisms, civil society and indigenous peoples' organisations have for some time been calling on the Bank and other IFIs to adopt more effective and accessible accountability mechanisms for their development operations (sections 2.3 and 2.4).⁷⁰ The Bank's evaluation department has likewise identified the need for new accountability structures to improve the implementation of social and environmental policies and improve development effectiveness:

“Overall, performance in the area of safeguards has been only partially satisfactory. Fundamental reform of implementation and accountability processes is critical.”⁷¹

Revision of the World Bank's Indigenous Peoples Policy:

Since the mid-1990s, OD4.20 and other safeguard policies have been undergoing a process of revision as part of a Bank-wide “conversion” process that intends to standardise policies into a new three-tier format: Operational Policy (OP), Bank Procedures (BP) and Good Practice (Sourcebook). The former two documents (OP and BP) are usually brief documents outlining the mandatory rules and requirements under specific themes or topics (note that Draft OP 4.10 contains two Parts. Part I is mandatory, while Part II is optional good practice which is not required). The Sourcebook is a more detailed guide on non-mandatory best practice.

Concerns over the policy revision:

The Bank argues that simplifying and streamlining its policies is necessary because clearer guidance will improve the quality of compliance with safeguard provisions. However, the whole conversion process has been surrounded by controversy as NGOs and academics have detected regressive forces shaping the redrafting of the policies to minimise binding rules and limit coverage of the policy provisions. NGOs fear that policies are being “panel proofed” to restrict the grounds for claims to the Inspection Panel. The Bank's revision of its Indigenous Peoples Policy has been at the centre of this controversy for several years.

In the Bank's first round of public consultations on the policy revision held in 1998, indigenous peoples' organisations sent a strong message to the Bank that any new policy should be *stronger* than the existing one, particularly regarding its provisions on land and resource security.⁷² When the World Bank finally released its revised draft policy in March 2001, indigenous peoples were dismayed to see that it is actually *weaker* than the existing policy and that it had disregarded almost all the key indigenous recommendations made to the Bank in its 1998/99 public consultation. Key indigenous criticisms of the draft revised policy are that it:

⁷⁰ See, for example, Griffiths and Colchester (2000), Griffiths (2002) and Indigenous Peoples' Declaration (2002e).

⁷¹ OED (2002) at page 21. See also OED (2000).

⁷² See indigenous peoples' multiple recommendations to the World Bank Group made between 1998-2002 in relation to the revision of its Indigenous Peoples Policy (World Bank 1999, 2002).

- does not fully recognise the right of free prior and informed consent⁷³
- no longer specifies preconditions which must be met for project approval
- does not require Bank staff and borrowers to take action to safeguard indigenous peoples' rights to own, control and manage their lands (borrowers are only required to pay "attention" to these issues)
- falls below international human rights standards for indigenous peoples
- fails to prohibit involuntary resettlement of indigenous peoples
- does not apply to full structural adjustment loans
- has no requirement for indigenous tracking of World Bank operations
- lacks a general requirement for detailed baseline studies to determine indigenous peoples' preferences and concerns
- only requires a social assessment in cases where Bank staff decide that a development operation may have adverse impacts⁷⁴

In the second round of public consultations held in the summer and winter of 2001, indigenous peoples' organisations rejected the policy as a backward step that will not further the rights of indigenous peoples in development. The consultation process was also roundly condemned for being rushed and for lacking informed and representative indigenous participation. Overall there is a general feeling in the indigenous movement that the World Bank has lost its way in standard-setting and that its policies are falling *unacceptably far behind international standards*.⁷⁵

In October 2002, 15 indigenous representatives met with senior World Bank managers and policy makers to make their concerns known once again in a face-to-face dialogue. They criticised the Bank for failing to require action to safeguard indigenous land rights and for failing to ensure that the policy is consistent with indigenous peoples' rights guaranteed under international law. Indigenous and support organisations maintain that the World Bank is not a free agent and has duties and obligations to uphold indigenous rights as a subject of international customary law.⁷⁶ At the Roundtable, indigenous participants also urged the Bank to commit its legal department to another focused discussion with indigenous rights experts regarding peoples' rights in international law and their relation to the standards included in Bank's internal policies. As a result of the October 2002 Roundtable meeting, the Bank agreed to delay the finalisation of its policy and re-write the draft.

⁷³ Despite its failure to recognise the right of prior consent in relation to land and physical resources, Draft OP4.10 recognises this right of consent in relation to indigenous knowledge and 'cultural resources' (paragraph 16). It is also noteworthy that the IFC, a member of the World Bank Group, already applies the PIC standard in its Environmental and Social Review Procedures (ESRP), which exclude IFC microfinance for "*Production or activities that impinge on the lands owned, or claimed under adjudication, by indigenous peoples, without full documented consent of such peoples*" (Table 4: ESRP Annex G. – see <http://www.ifc.org/enviro/EnvSoc/ESRP/AnnexG/annexg.htm>).

⁷⁴ For a comprehensive summary of the problems with Bank's revision process and the March 2001 Draft revised policy, see FPP (2002a,b,c,d,e,f) and MacKay (2002a). See also CDES (2001a), AITPN (2002) and Downing and Moles (2002).

⁷⁵ Tebtebba Foundation (2001a,b), Transparencia (2001), Selverston-Scher (2001), Sulyandziga (2001), CONAIE (2001), CORE, Indigenous Peoples' Declaration (2001), CDES (2001a,b), AITPN (2002).

⁷⁶ *Indigenous Peoples' Statement to a Roundtable Discussion on the Revision of the World Bank Policy on Indigenous Peoples, 18 October 2002, Washington, D.C.* See especially the transcript of the meeting in World Bank (2003). See also MacKay (2002a), BIC et al (2002) and Salomon and Sengupta (2003) at pages 41-43.

Since the Roundtable meeting, the draft policy document has gone into a black hole for more than a year during which time it has been subjected to "re-drafting" by Bank technicians.

In May 2003 the United Nations Permanent Forum on Indigenous Issues (UNPFII) final report recommended that: "...*the Bank: continue to address issues currently outstanding, including the implementation of international customary laws and standards, in particular human rights instruments, full recognition of customary land and resource rights...recognition of the right of free and prior informed consent of indigenous peoples regarding development projects that affect them, and prohibition of the involuntary resettlement of indigenous peoples*" [at paragraph 33(a)]

More than fifty indigenous activists attending the World Parks Congress in September 2003 sent a letter to the President of the World Bank calling for a full and effective public consultation in good faith - with timely *prior* dissemination of the second draft of the policy and accompanying documents in the right languages so that indigenous peoples may make an *informed assessment* of the next draft to judge to what extent it does or does not meet their recommendations.

In October 2003, after hearing many and repeated protests from indigenous peoples about the backward nature of the Bank's proposed new policy on Indigenous Peoples, the EIR Eminent Person, Professor Emil Salim, wrote a personal letter to the President of the World Bank asking that the Bank refrain from finalising OP/BP 4.10 until it is revised in a manner acceptable to indigenous peoples themselves. The final EIR report issued at the end of November 2003 advises the World Bank Group that:

- WBG should refrain from approving the current draft OP 4.10 before high-level discussions have taken place with indigenous peoples, including a legal roundtable discussion between WBG lawyers, indigenous representatives, and legal experts on the consistency of the policy with internationally guaranteed human rights;
- this high-level discussion take place within a year of the submission of the final EIR report

In a response to the October letter, the Bank agreed to delay finalisation of the policy until it had considered the recommendations of the EIR report. The Bank has also finally agreed to a focused legal discussion on indigenous peoples' rights and international law. It is anticipated that this discussion will take place in the first half of 2004 after which the Bank's revised policy will be finalised, possibly before the end of the year.

At the close of the EIR process at the end of 2003, the Eminent Person Emil Salim had stated that he considers the formulation of an acceptable policy on Indigenous Peoples as a test case for the Bank's commitment to sustainable development.

2.3 Inter-American Development Bank (IDB)

The Inter-American Development Bank (IDB) does not have a single policy for dealing with indigenous peoples affected by its loan operations. However, in 1990 the Bank did adopt a sub-set of "guiding principles" for the Bank's loan operations

affecting “tribal and other population groups traditionally inhabiting project areas” in its internal *Strategies and Procedures on Socio-cultural Issues as related to the Environment* (still in force).⁷⁷ Indigenous organisations and NGOs have complained that these IDB internal standards relating to indigenous and tribal communities were developed without the active participation of indigenous peoples.⁷⁸

During the 1990s, the IDB also adopted a number of mandatory “general” and “operational” policies, which have been reviewed and approved by its Board of Directors. Several of these binding policies, including the 1991 Forestry Development policy and 1998 Involuntary Resettlement policy, contain specific provisions relating to the need to safeguard and respect the rights of indigenous and tribal communities.

The IDB’s 1998 Resettlement policy explicitly prohibits Bank financing for forced evictions of indigenous peoples (Box 10). It is significant that the detailed (and separate) IDB’s 1999 good practice “guidelines” on resettlement also highlight that precautions against involuntary resettlement must also be applied in conservation and protected area projects:

“Indigenous people present a special case for resettlement planning because of their deep attachment to land and place. To date there are almost no accounts of successful resettlement involving indigenous people...In the case of indigenous people, the first principle of avoiding or absolutely minimizing resettlement should be strictly adhered to...This applies equally to projects that aim to protect the environment, such as the creation of national parks or reserves.”⁷⁹

Oversight and quality control for the application of policy requirements relating to indigenous peoples in the IDB portfolio is the responsibility of a dedicated staff team (of 4.5 persons) in the Indigenous Peoples and Community Development Unit (IND).⁸⁰ Overall compliance with the IDB’s mandatory policies in its loan agreements and operations is monitored by the IDB’s Committee on Environmental and Social Impacts (CESI).

The CESI committee is composed of the Division Chiefs of the IDB’s major planning, policy, legal and operational departments including the head of the Indigenous Peoples and Community Development Unit. The duties and responsibilities of the CESI are laid down in the *Procedures of the Committee on Environment and Social Impact*. These procedural rules require CESI to review all IDB project proposals and loan agreements and make recommendations that may result in mandatory requirements that must be complied with by Project Teams and borrowers (Box 10). IDB’s particular oversight and safeguard procedures may therefore transform non-

⁷⁷ <http://www.iadb.org/sds/doc/IND%2DAlderuyttereESCI.pdf>

⁷⁸ cf. Smidt-Nielsen (1999) at page 42

⁷⁹ IDB (1999) *Involuntary Resettlement in IDB Projects: principles and guidelines* IDB Washington, DC at page 14. It is surprising to note that the specific critical benchmark relating to free and prior informed consent and indigenous peoples included in the Bank’s sectoral operational policy on resettlement (OP710: para.5) is not dealt with in the IDB’s detailed guidelines.

⁸⁰ The Indigenous Peoples and Community Development Unit (IND) is also responsible more generally for community consultation and resettlement issues: http://www.iadb.org/sds/ind/index_ind_e.htm

mandatory guidelines into binding conditions in specific loan agreements if CESI considers such measures are necessary in a particular case.⁸¹

This review has learned that that IDB policy makers have not developed a specific policy on indigenous peoples due to an emerging resistance to binding standards by certain members of the Bank's Board (despite the fact that during the 1990s the Board had endorsed the mandatory policy on resettlement). IDB policy makers admit that other than the Bank's binding 1998 Involuntary Resettlement policy, many of the Bank's mandatory policies are now out of step with current standards on sustainable development. Again, however, the Board has tended to block any updating of these instruments. For this reason, in parallel the World Bank Group, greater emphasis is now being placed on non-binding aspirational sectoral, institutional and thematic "strategies."

These documents, which are developed by IDB technical staff and are not approved by the Bank's Board, set out the Bank's vision for a five or ten-year span of lending. Indigenous issues are dealt with in a number of the IDB's strategy documents. The 1997 IDB *Strategy for Poverty Reduction* identifies poverty reduction and indigenous peoples as a key issue and recommends that the IDB take action to develop poverty reduction strategies tailored to indigenous priorities and socio-cultural circumstances:

"Given that in socioeconomic terms indigenous groups represent such an important sector of the poor and extremely poor, it is paramount...to address the sociocultural dimension of poverty and to establish poverty reduction strategies that are based on a better understanding of the linkage between poverty and ethnicity. Projects should be based on a genuine dialogue with indigenous organizations so that they include indigenous views, aspirations and potential contributions in the design of social service delivery strategies"⁸²

⁸¹ <http://www.iadb.org/sds/doc/env%20CESIprocedE.pdf>

⁸² IDB (1997) *A Strategy for Poverty Reduction* IADB, Washington, DC No SOC-103 at page 13.

BOX 10: Inter-American Development Bank (IDB)

Title of policy(s): (i) *Strategies and Procedures on Socio-cultural Issues as related to the Environment* (June 1990)
(ii) *OP 710 Involuntary Resettlement* (August 1998)
(iii) *OP 723 Forestry Development* (March 1991)
(iv) *Procedures of the Committee on Environment and Social Impact (CESI)* (nd)

Available at: (i) <http://www.iadb.org/sds/doc/IND%2DADeruyttereESCI.pdf>
(ii) <http://www.iadb.org/cont/poli/OP-710E.htm>
(iii) <http://www.iadb.org/cont/poli/OP-723E.htm>
(iv) <http://www.iadb.org/sds/doc/env%2ECESIprocedE.pdf>

Standards source: Not explicit. Emphasis on national borrower legislation.

Approach: Impact assessment, mitigation, benefit sharing

Some key provisions

International standards and human rights:

- > “The general principles which will guide the Bank’s activities (include)...recognition of the individual and collective rights of indigenous populations, especially tribal peoples, as established by national legislations, which in many countries are supported by international legal instruments.” [document(i): section b, 2nd bullet]

Baseline studies and impact assessments:

- > “...for all Bank activities that may directly affect tribal and other forest peoples, the following actions are taken...identification, as early as possible, of tribal and other vulnerable groups in the project area; early preparation of quality background information...” [Doc.(i)section c. point 2]
- > “As part of the identification phase of any operation, the Project Team must determine the scope of environmental quality and social impact issues...The centrepiece of the scoping process is the Environmental and Social Impact Brief (ESIB) [CESI Procedures – CP, para. 4.01]
- > “As an integral part of project preparation ... an environmental assessment including social impact considerations will be conducted ... an environmental impact assessment (EIA) will be carried out by the borrower for all operations with potentially significant impacts on the natural and human environment” [CP, paras. 4.08 and 4.10.]
- > EIAs must include (among other elements): “an analysis of the direct and indirect environmental and social impacts and risks” (and) “a summary description and evaluation of the alternatives considered...” (and) a “record of the process and a summary of the results of consultation with affected groups” [CP: 4.10, (iii)(iv)(v)]

Policy dialogue and preconditions for loan approval:

- > “In the context of operations processing, the CESI functions as a technical sub-committee to which the Loan Committee has delegated review of environmental and social impact issues...the recommendations of the CESI constitute Bank requirements for approval of an operation” [CESI Procedures, para.3.01]
- > “The ESIB, once approved by the CESI...identifies the environmental quality and social impact issues that must be resolved to ensure that the operation is viable and eligible for Bank support” [CESI Procedures, para. 4.01]
- > “Upon approval of the ESIB, the Project Team Leader informed the potential borrower of the Bank’s environmental quality and social impact management requirements” [CP: 4.14 point 1]
- > “The Bank requires that borrowers: (i) employ reasonable consultation procedures to elicit the informed opinion of concerned local groups, and take their views into account during project preparation and implementation... and (ii) provide evidence of compliance with national legislation, regulations and procedures regarding public consultation.” [CP: 4.14 point 3]

Protection against involuntary resettlement:

- > “...The Bank will...only support operations that involve the displacement of indigenous communities or other low income ethnic minority communities, if the Bank can ascertain that: (i) the resettlement component will result in direct benefits to the affected community relative to their prior situation; (ii) customary rights will be fully recognized and fairly compensated; (iii) compensation options will include land-based resettlement; and (iv) the people affected have given their informed consent to the resettlement and compensation measures.” [OP 710: Special Considerations – para. 5. See especially also]
- > “...the Bank will avoid, where possible, the relocation of tribal indigenous people from the lands that they traditionally occupy” [Doc.(i)section b. 3rd bullet]

Land and resource rights:

- > “...Deterioration of the living conditions of these groups should be avoided, respecting their land and other rights, as determined by the national legislation.” [OP 723: Criteria: 4th bullet]

Land and resource rights: (Continued)

- > Recognition of individual and collective rights includes ... “the right of possession and property of the lands they (indigenous and tribal peoples) traditionally inhabit and the natural resources found therewithin...” [document(i): section b, 2nd bullet]
- > “...in general the IDB will not support projects that involve unnecessary or avoidable encroachment onto territories used or occupied by tribal groups or projects affecting tribal lands, unless the tribal society is in agreement, and unless it is ensured that the executing agencies have the capabilities of implementing effective measures to safeguard tribal populations and their lands” [Document (i), section b, 3rd bullet]
- > “...for all Bank activities that may directly affect tribal and other forest peoples, the following actions are taken...design of project components aimed at protecting indigenous population groups and their lands...specific components will include, depending on the specific needs and priorities of the groups concerned, measures to demarcate and title tribal lands, including relocation of non-tribal settlers...” [Doc.(i)section c. point 3]

Benefit sharing and mitigation:

- > “In forestry projects financed by the Bank it will be ensured that local groups, including indigenous communities, participate directly or indirectly in the economic benefits generated by these projects...” [OP 723: Criteria: 4th bullet]
- > “...recognition of the necessity to support special measures to protect tribal groups...especially those with little contact with the rest of society, in the following areas: 1) measures to protect indigenous territories, including demarcation and titling of tribal lands; 2) preventive and curative health measures....3) measures...to avoid, to the extent possible, traumatic cultural shock” [Document (i), section b, 4th bullet]

Participation and accountability:

- > Project components... “will have to be integrated within overall project design, time-frame and budget, and will involve the consultation of the affected population groups” [Doc.(i)section c. point 3]
- > “The methodology and results of consultations...as well as provisions for community participation during project implementation, when applicable, must be documented in impact assessments, and summarized in Environmental and Social Impact reports (ESIR)” [CP:4.14, point 3]

Instructions to Bank staff, project team and borrowers:

- > “...the following actions are taken:...
- > “Definition, before the approval of the project, of the implementation plan, the execution mechanisms, the budgets and the institutional responsibilities of all project participants, including the mechanisms for participation of the affected population groups in the execution of the project” [Doc.(i)section c. point 4]
- > “Monitoring, throughout project execution, of the adequate implementation of the measures adopted in the implementation plan” [Doc.(i)section c. point 6]
- > “The Project Team is responsible for informing the borrower of the steps necessary to comply with (the Bank’s) requirements, in accordance with the Bank’s general policies (refer, for example, to the Eighth Replenishment document and the Policy on Disclosure of Information) [CP:4.14 point 3]
- > “The Project Team ensures impact assessments, including EIAs and other studies are completed to the Bank’s satisfaction...and that the final draft of the impact assessment is made available locally prior to the analysis mission...”
- > “The ESIR is the Bank’s final impact statement, prepared by the project Team based on its own analysis and the findings and recommendations of the EIA and other required studies...” [CP: 4.16]
- > “...the Project team and Country Office Specialists are responsible for monitoring compliance” [CP:4.21]

Type of standards: Provisions in operational policies and procedures, such as the Resettlement and Information Disclosure policies and CESI Procedures are binding on Bank staff. Guidelines and best practice reports provide optional guidance for Bank staff and borrowing agencies. Specific requirements stemming from these general mandatory policies and the more detailed best-practice policies may be applied to the borrower, as appropriate, through the inclusion of mandatory conditions in the Loan Agreement by CESI.

Accountability mechanism: Locally affected people can raise concerns with the IDB Project Team. Formal complaints regarding violation of the Bank’s policies and procedures may be submitted to the IDB Independent Inspection Mechanism (<http://www.iadb.org/cont/poli/investig.htm>) in accordance with the Bank’s official Inspection Policy (available at: <http://www.iadb.org/cont/poli/mecanism.pdf>)

Implementation Review: A review of the impact of ten IDB-assisted projects on indigenous peoples was carried out in 2001 (<http://www.iadb.org/ove/re261eng.pdf>). Thematic reviews have also been conducted as part of several recent Working Papers commissioned by the Indigenous Peoples and Community Development Unit’s (IND) [see “Technical Papers and Conference Proceedings at: http://www.iadb.org/sds/ind/mainpublication_453_e.htm]

The IDB's 2001 Participation Strategy and its forthcoming Environmental Strategy likewise address indigenous peoples. Other non-mandatory instruments that shape the design of IDB projects and programmes and provide orientation for Bank staff include its "Good Practice" and technical "Working Paper" series on lessons learned from IDB-assisted projects as well as development practice internationally.⁸³ Recent studies that relate specifically to indigenous peoples include papers on indigenous women and development⁸⁴, community consultation⁸⁵, poverty reduction⁸⁶, land titling⁸⁷ and social investment funds⁸⁸. In addition to policies, procedures, strategies, guidelines and technical papers, the IDB also produces a number of conference proceedings and discussion papers on indigenous issues.⁸⁹

In 2003, the Indigenous Peoples and Community Development Unit plans to produce a *Strategy on Indigenous Peoples and Development*, which IDB staff advise may recommend that the IDB should develop a specific and mandatory policy on indigenous peoples (see BIC 2003c). However, to date, the IDB has not made specific public commitments on formulation of an indigenous peoples policy.

IDB projects and programmes affecting indigenous peoples:

The IDB was a key player in the establishment of the Indigenous Peoples Fund (*Fondo Indígena*) in 1993. It continues to provide technical support and now administers the capital endowment finances for the Fund (see also section 2.8) in addition to its management of a number of associated bilateral trust funds established to assist indigenous peoples' development.⁹⁰ Since 1994 the IDB has committed itself to increasing its support for development and poverty reduction activities targeting indigenous peoples. Its Eighth Replenishment statement affirms:

"...Indigenous groups typically belong to the poorest economic strata. Accordingly, project design and execution mechanisms should seek to strengthen the capacity of indigenous groups to undertake and implement development projects...The Bank will step up its efforts to obtain additional financing for programs benefiting indigenous groups in order to adequately address their needs."⁹¹

⁸³ http://www.iadb.org/exr/english/policies/policies_bestpractices.htm

⁸⁴ Meentzen, A (2000) *Estrategias de desarrollo culturalmente adecuadas para mujeres indígenas* IDB Working Paper http://www.iadb.org/sds/author/author_488_e.htm

⁸⁵ Nessim, H and César Perafán C (2001) *Community Consultation: The Case of Darien* IDB Working Paper

⁸⁶ Plant, R (1998a) *Indigenous Peoples and Poverty Reduction: A Case Study of Guatemala* IDB Working Paper; Plant, R (1998b) *Issues in Indigenous Poverty and Development* IDB Working Paper

⁸⁷ Hvalkof, S and Plant, R (2001) *Land Titling and Indigenous Peoples* Sustainable Development Department, Technical Paper Series, IND-109, IDB

⁸⁸ Renshaw, J (2001) *Social Investment Funds and Indigenous Peoples* Sustainable Development Department, Best Practice Series, IDB IND-108

⁸⁹ See, for example, Iturralde and Krotz 1996, Perafán 2000, Perafán and Savedoff 2002.

⁹⁰ http://www.iadb.org/sds/ind/site_401_e.htm See also, Deruyttere 1994.

⁹¹ IDB (1994) *Report on the Eighth General Increase in Resources of the Inter-American Development Bank* IDB, Washington DC at Section 2: Key Areas of Bank Activity, sub-section A. Poverty reduction and social equity – paragraph 2.27.

This commitment was re-affirmed in 2001 in the Summit of the Americas in which the IDB pledged support for the *Program for the Sustainable Development of the Meso-American Biological Corridor* and the *Program for Legal Security and Sustainable Development of Indigenous Lands*. Under the latter programme:

“The IDB proposes to provide financing ...to assist demarcation, regularization, surveying and titling of indigenous lands, to facilitate conflict resolution over the use of indigenous lands, and to develop land use plans for sustainable management of the natural resources in these territories”⁹²

Notwithstanding the identification of indigenous issues as a priority for funding, scrutiny of the IDB’s current portfolio reveals that there are still relatively few projects that directly target indigenous peoples.⁹³ These include a development programme for indigenous communities in Chile,⁹⁴ support for indigenous and black communities in Honduras⁹⁵ and a few small-scale technical co-operation (TC) loans such as the Wayuu Economic Development Project in Colombia and a capacity building project for “vulnerable groups” in northern Argentina - including Indian communities.

Rather than targeted projects, most IDB social sector projects have had indirect impacts on indigenous peoples through the Bank’s support for national social investment funds and sustainable natural resource management projects in countries such as Panama, Guatemala, Peru and Guyana where some (but not all) of the projects feature indigenous “components”.⁹⁶ The IDB’s educational, health, sanitation and child development projects in Mexico, Peru and Bolivia have also indirectly affected indigenous communities.⁹⁷ Support for the Bolivian Poverty Reduction Strategy (funded jointly with DFID), includes a new Draft Indigenous Peoples Development Act and the creation of a “Legal Assistance Service for Indigenous Peoples.”⁹⁸

The Indigenous Peoples and Community Development Unit is also involved in efforts to support a number of innovative pilot projects on “financing mechanisms for indigenous development”. These include a proposed joint gas venture in Ecuador that involves a partnership between indigenous organisations and the state petroleum company and also studies on the same subject of “joint ventures” for the member countries of the Organización Latinoamericana de Energía (OLADE)⁹⁹ – an organisation that is beginning to raise some concerns among indigenous organisations in Latin America.

⁹² Ibid. at page 44.

⁹³ IDB current and past projects, see

http://www.iadb.org/exr/english/projects/projects_appd_country.htm (by country)

http://www.iadb.org/exr/english/projects/projects_appd_sector.htm (by sector). For proposed IDB projects, see http://www.iadb.org/exr/english/projects/projects_prop_country.htm and

http://www.iadb.org/exr/english/projects/projects_prop_sector.htm. Very up-to-date information on

proposed IDB projects can be obtained by subscribing to its procurement web page at *IDB Projects Online*: <http://condc05.iadb.org/idbprojects/>. A list of proposed IDB projects is also published weekly by its Public Information Center: <http://www.iadb.org/exr/pic/pictx.htm>

⁹⁴ <http://www.iadb.org/exr/doc98/apr/ch1311e.pdf>

⁹⁵ <http://www.iadb.org/EXR/doc98/apr/ho1090e.pdf>

⁹⁶ See Deruyttere 1997 at page 14. See also Plant and Hvalkof 2001 at pages 53-54.

⁹⁷ Ibid and supra note 22. See also <http://www.transparencia.org.mx/bidpre.htm>

⁹⁸ IDB (2001b) *Social Sector Program in Support of the Poverty Reduction Strategy BO-0203* IDB, Washington at pages 2 and 3.

⁹⁹ IND Unit Work Plan 2001-2002: http://www.iadb.org/sds/ind/site_3932_e.htm

Indigenous peoples' organisations report that even well-meaning IDB projects have sometimes left their communities worse off due to their failure to properly accommodate indigenous priorities and socio-cultural needs. As one indigenous woman comments on a past IDB rural credit project in Amazonian Ecuador (which reportedly failed to explain credit terms properly and indebted native people who were later unable to repay their debts):

“The only achievement of the whole credit project is that indigenous families are poorer now than they were before...That is why we do not trust large banks. People are worried about their debt and live in fear that the Bank will penalise them. Living with anxiety is not development for us...” J Cuyi, CONFENIAE, October 1999¹⁰⁰

As well as these social sector and pilot development projects, the IDB remains significantly involved in conventional infrastructure projects in the energy and transport sectors and continues to promote and assist economic reform and commercial integration projects at the country and regional levels. In common with other multilateral development banks, the IDB's large investment projects and macro-economic interventions have attracted criticism of their direct and indirect social and environmental impacts. One example of a “problem project” is the huge Yacyretá dam (originally jointly funded with the World Bank), which spans the border between Argentina and Paraguay. This immense dam project has wreaked havoc on indigenous Mbya Guaraní communities who have been forced off their traditional lands against their will and have so far not received adequate compensation.

The Yacyretá case was the first to be submitted by affected citizens to the IDB's Independent Inspection Mechanism (IIM) in 1997.¹⁰¹ The investigation upheld the complaints raised by local communities and found that the IDB had violated its own policies and procedures during the design and implementation of the project.¹⁰² Several years after the inspection claim, local communities have been able to consolidate their organisations and make demands for proper compensation, but many of the problems remain unresolved and people are now threatened with further losses due to a proposal to raise the water level in the dam by 76 metres which has prompted communities to now submit a *second* claim to the IIM.¹⁰³ NGOs and community-based organisations are now pressing the IDB to revise its inspection function to make it more agile, transparent and accountable to complainants (see below).¹⁰⁴

Indigenous peoples' organisations and civil society organisations also complain that many of the IDB's projects and programmes lack effective participation mechanisms and that the Bank's internal standards on indigenous peoples are not being applied in practice. One example is the large regional *Plan Puebla Panamá (PPP)* project, which began in 2000 and involves multiple programmes for the consolidation of road, energy and telecommunication networks across Central America.¹⁰⁵

¹⁰⁰ Griffiths 1999 at page 34

¹⁰¹ <http://www.iadb.org/cont/poli/yacyreta.htm>

¹⁰² Treakle 1998

¹⁰³ Sobrevivencia (2002) *Yacyreta: no más daños!* <http://www.sobrevivencia.org.py/yacyreta1.htm>

¹⁰⁴ International Rivers Network (2003) *Letter to President of the IDB* February 2003.

¹⁰⁵ <http://www.iadb.org/ppp/index.asp> See also <http://www.bicusa.org/lac/PPP.htm>

Despite the existence of an “Information, Consultation and Participation (ICP) Program within the initiative, the PPP has been criticised for its failure to foster public participation and for failing to include a clear indigenous component to promote and secure indigenous tenurial rights over their traditional territories affected by the project.¹⁰⁶ The IDB is also the subject of increasing criticism for its support for controversial oil and gas pipeline projects affecting indigenous territories. Despite local civil society opposition to its support for the expansion of gas pipelines in lowland Bolivia involving the discredited multi-national Enron,¹⁰⁷ the IDB Board approved the project in December 2002.

In Peru, the IDB has recently approved co-funding for the controversial Camisea gas pipeline project that threatens numerous indigenous communities, including remote groups in voluntary isolation.¹⁰⁸ The initial phases of this mega project have already begun to cause negative social and ecological impacts in the region, and the Peruvian government and private firms are now seeking IDB support to deal with social and environmental issues.¹⁰⁹ Campaigners and local indigenous organisations were disappointed that the IDB Board had disregarded their arguments that the Bank should not become engaged with the Camisea project *as it does not have a specific policy to deal with indigenous peoples* and so is *not* well-equipped to address the complex problems and serious risks associated with the pipeline. Critics point out that by engaging with the project after implementation has begun, the IDB is officially condoning the late and reactive application of sustainable development and human rights standards in extractive industry investments, which sends entirely the wrong signal to the global energy sector which should be required to apply these standards at the very outset of project conception.¹¹⁰

Indigenous organisations in Peru are now campaigning to try and ensure that their rights are properly addressed in the loan agreement between the IDB and the Peruvian government.

Reviews of implementation:

The IDB’s Office of Evaluation and Oversight (OVE) undertakes project, thematic and country-level evaluations of IDB loan operations, although few evaluations make explicit reference to the Bank’s social and environmental policies and procedures.¹¹¹ A recent 2001 OVE evaluation of ten IDB social and health sector projects affecting indigenous peoples found that although some benefits had been received in most cases, several projects had not been properly designed to meet indigenous priorities, while others lacked stability and sustainability due to lack of budgetary resources and a shortage of staff with a knowledge of indigenous languages.¹¹² Several thematic

¹⁰⁶ Indigenous Declaration (2002) *To the Presidents’ Summit of the Member Countries of the Plan Puebla Panamá (PPP), Merida, Yucatan, Mexico, June 27-28, 2002* <http://www.bicusa.org/lac/ppplettereng.pdf>

¹⁰⁷ Amazon Watch 2002a: http://www.amazonwatch.org/newsroom/newsreleases02/021114_bol.html

¹⁰⁸ <http://www.iadb.org/exr/doc98/pro/upe0233.pdf>

¹⁰⁹ Amazon Watch 2002b; 2002c; Serjali 2002a, 2002b; AIDSESP and COMARU (2003).

¹¹⁰ Amazon Watch 2002d

¹¹¹ http://www.iadb.org/cont/evo/evo_eng.htm It is noteworthy that the OEV’s recent country evaluation of its operations in Peru (1990-2000) makes just one passing reference to indigenous peoples. The review only deals briefly with the IDB’s land titling operations (paras 4.29-4.31) and does not mention indigenous land tenure issues despite explicit treatment of these impacts in a previous IDB Working Paper (cf. Plant and Hvalkof 2001) – see OVE 2002a: <http://www.iadb.org/ove/re262eng.pdf>

¹¹² IDB (2002b) at page iv and pages 39-40. See especially, the table on pages 1-3 of Annex I.

working papers have also assessed the impact of IDB projects and programmes on indigenous communities though, again, no assessment is made of the quality of implementation of the Bank's internal operational rules and guidelines relating to indigenous peoples.

The IDB paper on *Land Titling and Indigenous Peoples* finds that the IDB's national land-titling project in Colombia lacked adequate finances for the land restitution for upland indigenous communities though in principle the territorial rights of indigenous communities were clearly recognised in the project design.¹¹³ In Panama, careful consideration of indigenous peoples' rights occurred in the preparation of the *Program for Sustainable Development of Darien (PN-0116)*, but major loopholes had been left in the project design, which failed to secure the lands of indigenous communities outside legally recognised indigenous territories (*comarcas*).¹¹⁴

In Peru, the land titling sector review found that the Bank's support for the *Programa Especial para la Titulación de Tierras (PETT)* paid relatively little attention to indigenous issues in project preparation and failed to consult with indigenous peoples' organisations regarding project design. The programme also suffered from an over-emphasis on market-based policies that are ill-adapted to the need of native communities.¹¹⁵

Likewise, the report's authors found that despite the large indigenous population in Ecuador, the Bank's country strategy paper at that time (c.1999) paid "...little specific attention to indigenous peoples as a target group" and the IDB-assisted *Agricultural Sector Program* had not given adequate treatment to indigenous land tenure issues.¹¹⁶ The recent IDB study of its social investment funds in Guyana and Honduras concluded that the activities financed under the programs do not adequately address the underlying causes of poverty, lack adequate training components and tend to place too much reliance on the voluntary labour and time of women at the field level.¹¹⁷

Together, these OEV reviews and case studies have generated a number of recommendations for improving the quality of IDB operations affecting indigenous peoples:

- ❑ Include more properly funded and long-term capacity-building and training components in social sector programmes and projects involving indigenous communities;
- ❑ Ensure direct engagement with project beneficiaries and recognise that designing and executing projects with indigenous communities requires long lead times and long-term effort;
- ❑ Allocate appropriate budgets for effective consultation and community participation during project design;

¹¹³ Plant and Hvalkof 2001 at page 54-55.

¹¹⁴ Ibid. at page 56

¹¹⁵ Ibid. at pages 58-60

¹¹⁶ Ibid: at page 60. It is noteworthy that in a more recent loan proposal for a land regularisation program in Ecuador, explicit mention is made of the need to respect indigenous peoples' collective territorial rights as established under the Ecuadorian Constitution (IDB 2002c at paras. 3.14 and 4.23).

¹¹⁷ Renshaw 2001: 19-21

- ❑ Compile thorough baseline studies for formulation of relevant performance-based indicators;
- ❑ Guarantee long-term reliable “budget protected” financing for projects targeting indigenous communities (applying at least two periods of renewable 3-yearly tranches);
- ❑ Encourage implementing agencies to hire indigenous staff who speak local languages and are knowledgeable of local traditions and values;
- ❑ Make sure that the IDB’s forthcoming new generation of “participatory community development projects” are monitored for their impacts to ensure they have incorporated lessons learned;
- ❑ Take measure to ensure that women and girls participate in community meetings and are paid for their contributions to the project;
- ❑ Base Bank interventions on more careful and detailed empirical and cultural research on key issues like indigenous land tenure systems and their needs and priorities;
- ❑ Engage representative indigenous peoples’ organisations in policy debate and support them in formulating their own recommendations;
- ❑ Where Bank projects affect indigenous lands, their land tenure and territorial claims should be addressed in the initial stages of the project cycle.

Ineffective accountability and complaints procedures:

Like the World Bank Inspection Panel, the IDB’s Independent Inspection Mechanism is proving to be cumbersome and sluggish in response to claims by citizens adversely affected by its loan operations. A recent joint NGO sign-on letter to the IDB criticised the Inspection office for its poor transparency, lack of independence and its failure to address the concerns of complainants in a timely manner.¹¹⁸

2.4 Asian Development Bank

The Board of the Asian Development Bank (ADB) approved a *Policy on Indigenous Peoples* in April 1998.¹¹⁹ The Indigenous Peoples Policy forms one of three ADB safeguard policies.¹²⁰ The policy was formulated over three-years in a process that was largely internal to the Bank, but did involve one forum discussion with indigenous peoples’ organisations in 1995 and a limited number of public consultations in 1996 and 1997. In December 2000, a summary version of the policy was included in the ADB’s Operational Manual (OM)(Box 11).

¹¹⁸ Letter from BIC to Mr. Enrique Iglesias, President of the IDB, 18 February 2003. Endorsed by 20 Southern NGOs and community-based organisations and 6 Northern NGOs.

¹¹⁹ Asian Development Bank (1999) *Policy on Indigenous Peoples* ADB, Manila 30pp

¹²⁰ The other two ADB safeguard policies include the policy on Involuntary Resettlement (OM 50) and Environment (OM 20).

Despite some consultation with indigenous peoples, the ADB has been sharply criticised for failing to involve indigenous peoples in the finalisation of the policy - the provisions of which have been condemned for being weak and at odds with internationally agreed standards on the rights of indigenous peoples. The substantial delay in incorporating the policy in the Bank's operational manual has also been criticised.¹²¹ NGOs have also been concerned about the ADB's overall policy framework as in some cases the full operational policies approved by ADB's Board of governors have not been rigorously summarised by management in the Operational Manual.¹²² These concerns stem from the controversial Samut Prakarn Inspection case relating to a waste water management project in Thailand.¹²³ Though this case did not affect indigenous peoples, the inspection process uncovered a general ambiguity among staff and borrowers about which policy documents should be followed in ADB loan operations and which policy provisions may be subject to inspection. In response to this ambiguity, the ADB Board ruled in January 2002 that:

“All ADB policies approved by the Board are to be implemented by ADB staff irrespective of whether they are included in the OM or not. Inspection covers all elements of operational policies and procedures that provide ADB staff with mandatory directions on the formulation, processing, and implementation of projects.”

Scrutiny of the 1999 Indigenous Peoples policy and its summary version in the Operational Manual shows the summary to be more or less accurate. However, it is noteworthy that the OM omits mentioning the requirement that: “*Initiatives should be conceived, planned and implemented, to the maximum extent possible, with the informed consent of affected communities.*”¹²⁴ In late 2002, NGOs were alarmed by signs that ADB management was seeking to limit the remit, scope and independence of the Inspection Committee by restricting policies for inspection to a new reduced “compendium” of mandatory standards and regulations that was to be unilaterally drawn up by Bank policy-makers.¹²⁵

In the case of the ADB's Indigenous Peoples Policy, ADB management's controversial draft compendium considered that the policy only contains two mandatory requirements (i) the need for an Initial Social Assessment for all projects that may affect indigenous communities and (ii) preparation of an Indigenous Peoples Development Plan where adverse impacts are anticipated. There remain doubts therefore about how ADB management views other key provisions of the Indigenous Peoples Policy.¹²⁶ This question may now be already partly resolved. In early 2003, intense advocacy by NGOs persuaded senior ADB staff to shelve the compendium proposals (despite strong support for the Compendium among Borrower governments on the Bank's Board).¹²⁷ Nonetheless, the whole controversy has again highlighted how management and citizens may hold quite different views of the status of operational policies and their provisions.

¹²¹ See, for example, AITPN (2000) *ADB Programs in the Forestry Sector in Bangladesh: identifying critical issues for changes in ADB policy* AITPN, New Delhi

¹²² JACSES 2002a

¹²⁴ ADB (1999) *Policy on Indigenous Peoples* ADB, Manila - at page 17.

¹²⁵ See ADB NGO Forum 2002a and 2002b and JCAS 2002b and 2002c.

¹²⁶ <http://www.adb.org/Inspection/compendium.pdf>

¹²⁷ ADB NGO Forum (2003).

BOX 12: Asian Development Bank

Title of policy: (i) *Policy on Indigenous Peoples* [April 1998 – full policy document]
(ii) *Operational Manual Section 53: Indigenous Peoples* [summary - 21 December 2000]

Available at: (i) http://www.adb.org/Documents/Policies/Indigenous_Peoples/IPPP.pdf
(ii) <http://www.adb.org/Documents/Manuals/Operations/om53.asp?p=aadb>

Languages: English

Standards source: Not explicit. Key point of departure is national legislation.

Approach: Participation; mitigation, benefit sharing.

Some key provisions

Policy scope and coverage:

- > Composed of two parts: Bank policies (BP) and Operational procedures (OP)
- > Applies to projects in the both the public and private sector [BP para.1]
- > Despite provisions for consulting indigenous peoples' organisations, emphasises the definition of indigenous peoples according to a borrower's national legislation and national development policies [BP para. 4]

Baseline studies and impact assessments:

- > Initial social assessment (ISA) is required for every development project [OP para. 1] (which "...should be undertaken as early as possible in the project cycle..." [OP para. 8]... "This will provide the basis for including an appropriate social design in the project" [OP para 2]
- > "Clear mechanisms for accurate and objective analysis" of the circumstances of affected indigenous peoples should be prepared [BP para. 8 iii]
- > An indigenous peoples development plan (IPDP) "should include" a legal framework study;

Policy dialogue and preconditions for loan approval

- > "Where serious differences about major aspects between project sponsors and affected indigenous peoples are evident, adequate time should be allowed for the government and other project sponsors to clarify and resolve these differences well before ADB commits support for the project" [OP para. 9]
- > If ISA detects possible negative impacts, a Borrower must prepare an IPDP "acceptable to the ADB" [1999 Policy at page 19, final paragraph]

Land and resource rights:

- > An ISA and its component social analysis must provide information on existing land and resource rights and analyse "the problems with" and "likely positive and negative impacts on...rights to land and natural resources" [OP Appendix I (ii)(iii) + Appendix II 2i.a.b.c.;2ii.d; 2iii.b.c.)
- > An "appropriately prepared IPDP will include...consideration in the project design, of local patterns of social organization, cultural beliefs, ancestral territory, and resource use" [OP para. 5]
- > The legal framework study for an IPDP should give : "...Particular attention...to the rights of indigenous peoples to use and develop the lands that they occupy, to be protected against illegal intruders, and to have access to natural resources (such as forest, wildlife, and water) vital to their subsistence" [OP Appendix III2.ii]
- > An IPDP "...may, as appropriate, include" elements relating to the (i) legal framework, (ii) baseline data, (iii) land tenure" [OP Appendix III.1]

Benefit sharing and mitigation:

- > "...development interventions that will affect indigenous peoples should ensure that they have opportunities to participate in and benefit equally from the interventions" [BP para. 6]
- > "...ADB's interventions affecting indigenous peoples should...not impose the negative effects of development on indigenous peoples without appropriate and acceptable compensation [BP para.7]
- > An IPDP "will include...measures to avoid, mitigate, or compensate for" adverse effects [OP para. 5]

Participation and accountability:

- > Social analysis should "assess the needs and priorities of the indigenous peoples" [Appendix II iv.a]

[Continued]

Participation and accountability (Continued):

- > “...should (i) be consistent with the needs and aspirations of affected indigenous peoples; (ii) be compatible in substance and structure with affected indigenous peoples’ cultures and social and economic institutions; (iii) be conceived, planned, and implemented with the informed participation of affected communities [BP para. 7]
- > “...the mechanism for any intervention must be transparent and ensure accountability” [BP para 8(iv)]
- > “Through the preparation of a social design, the procedures and implementation schedules are planned for preparing and mobilizing the indigenous peoples to participate in the project.” [OP para. 3]
- > An “appropriately prepared IPDP will include...provisions for project implementation, monitoring, and evaluation...(and)...appropriate budgetary resources for its implementation” [OP para 4]
- > The “office of Environment and Social Development provides overall guidance and assistance in the application of ADB’s policy on indigenous peoples...(and)...the projects departments are responsible for addressing indigenous peoples’ issues in the context of project and TA operations” (OP para. 10)

Instructions to Bank staff, project task manager and borrowers:

- > If indigenous peoples are likely to be affected significantly or adversely...as identified in an initial social assessment, the borrower should be informed of ADB’s policy on indigenous peoples [BP para.10] and an IPDP “acceptable to the ADB must be prepared.” [1999 Policy Document, at page 19, final paragraph]
- > “...The borrower should prepare an indigenous peoples development plan as a part of work to prepare the relevant project for financing by ADB. The plan will provide the framework for maximizing project benefits to indigenous peoples and mitigating any negative effects.” [BP para. 10]
- > The responsibility for planning and implementing an IPDP acceptable to ADB rests with the government or other project sponsors [OP para. 6]
- > “As appropriate, ADB will provide support for preparing an IPDP through (i) assistance in formulating and implementing an indigenous peoples policy, strategy, law, regulations, and a specific plan” [OP para. 6];
- > Technical assistance (TA) will “strengthen the capacity of agencies responsible for the IPDP” [OP para. 6ii]
- > The IPDP should be completed during project appraisal [OP para.8]

Type of standards: Internal operational regulations that set out minimum standards and procedures that must be followed by Bank staff in all projects covered by the policy. Recent (controversial) proposals in late 2002 proposed by ADB policy-makers asserted that just two basic requirements are mandatory and binding under the policy: undertaking an initial social assessment (ISA) for *all* projects that may affect indigenous peoples; and preparing an IPDP for projects that may adversely affect indigenous communities. According to management’s interpretation, the rest of the policy contains non-mandatory provisions containing optional guidance for staff and project managers. This narrow interpretation has, however, been challenged by external rights holders in early 2003. Nevertheless, ambiguity over the precise status of different provisions remains.

Accountability mechanism: Formal complaints for non-compliance with the Bank mandatory policies can be submitted to the Bank Inspection Committee (BIC). Procedures for filing complaints are detailed in the ADB’s 1995 Inspection Function Policy (<http://www.adb.org/Documents/Policies/Inspection/default.asp#contents>)

Implementation Review: No formal sectoral review has been undertaken to examine how the policy has been applied. However, general reviews of the impact of ADB loan operations on indigenous peoples were carried out in 2001 for Cambodia, Vietnam, Indonesia, Philippines and the Pacific region as part of an ADB Regional Technical Assistance Project (RETA) on Capacity Building for Indigenous Peoples/Ethnic Minority Issues for Poverty Reduction (RETA 5953). Some reference is made to the use of ISA and IPDPs under the ADB policy (http://www.adb.org/Documents/Reports/Indigenous_Peoples/default.asp).

Strengths of the policy:

- Requires an outline social assessment procedure for *all* public sector and private sector ADB projects that may affect indigenous peoples;
- The guidelines for social assessment, social analysis and elaboration of IPDP place significant emphasis on the need to examine the potential impacts of proposed projects on indigenous peoples' rights to land and natural resources;
- Lines of responsibility for implementation and compliance with the policy are detailed for ADB institutions and the Borrower;
- Cross-references are made in other existing and forthcoming ADB operational policies, including its proposed policy on forests.¹²⁸

Weaknesses:

- Inadequate treatment of international agreements and instruments on the rights of indigenous peoples;
- Inconsistent with international standards on the human rights of indigenous peoples;
- Lacks a rights-based framework;
- Fails to recognise and protect indigenous peoples' land ownership rights;
- Emphasis on national legislation and development policies that may be prejudicial to the rights and interests of indigenous peoples;
- Does not apply a self-development approach;
- Does not fully recognise the right to free and prior informed consent;
- Fails to prohibit forced relocation;
- Uses vague language and derogations with few clear requirements;
- Fails to specify that affected communities should be involved in the Initial Social Assessment (ISA);
- Lacks clarity on minimum benchmarks and mandatory requirements as opposed to non-mandatory guidelines.
- Ambiguity over mandatory and non-mandatory provisions.
- Spread across different published documents

ADB projects and programmes affecting indigenous peoples:

The ADB provides loans to both the public and private sectors for sectoral and multi-sectoral projects relating to agriculture and natural resources, energy, industry and minerals, transport and communication, social infrastructure and finance.¹²⁹ Like other multilateral and bilateral development agencies, the ADB has adopted a strategic focus on poverty reduction. To this end, the ADB has established a number of bilateral poverty reduction "partnership agreements" with several countries in the region (e.g., Nepal, Sri Lanka, Bhutan, Cambodia). Given that indigenous peoples suffer disproportionate levels of poverty, it is likely that ADB-funded poverty alleviation projects will increasingly impact indigenous peoples.

¹²⁸ ADB (2002) *Draft ADB forest policy: forests for all and forever – a working paper*, ADB, Manila at page 12, section B.41(i).

¹²⁹ <http://www.adb.org/Projects/profiles.asp>

At this stage, however, most ADB projects affect indigenous peoples indirectly and few projects explicitly target indigenous communities. An exception is the Regional Technical Assistance Project (RETA) on *Capacity Building for Indigenous Peoples/Ethnic Minority Issues for Poverty Reduction* (RETA 5953), which involved regional workshops and sectoral reviews of poverty issues, ethnic minorities and indigenous peoples in Cambodia, Vietnam, Indonesia, Philippines and the Pacific region. The regional review found that poor living standards among indigenous communities in the region are, above all, due to insecure land tenure and a corresponding lack of food and livelihood security.¹³⁰

Information on policy implementation:

The ADB has not carried out an evaluation of the quality of implementation of its Indigenous Peoples Policy and its project and country evaluation reports rarely make any reference to the issue.¹³¹ Independent reports suggest that implementation of the Bank's social and environmental policies has been highly variable. In some cases social issues relating to land rights and indigenous and tribal communities have been included in loan agreements – even prior to adoption of the 1998 policy, while in others these safeguards have been left out altogether even after the policy was adopted.¹³²

Initial evidence reveals that compliance with the Indigenous Peoples Policy since its adoption has been of mixed quality. The regional poverty review found that most ADB national-level Country Strategy and Programme (CSP) papers make little or no mention of indigenous issues.¹³³ There is also evidence that the ADB's policies, including its Indigenous Peoples Policy, are not always integrated into loan agreements.

Rights holders and civil society organisations argue that proper implementation of operational policies must include their application in legal agreements between the ADB and its borrowers. As local NGOs involved in a recent request for Inspection Committee investigation into a damaging ADB-assisted irrigation project in Pakistan observe:

“The failure in ensuring the inclusion of the Bank's applicable policies and procedures in the loan agreement and guarantee agreement...must be considered non-compliance...The current emphasis on problem solving and flexible approach in the inspection review process can be beneficial to the Bank and member countries as powerful stakeholders but affected people stand to lose if their rights and entitlements are not explicitly recognized and respected through legally binding agreements.”¹³⁴

¹³⁰Plant (2002a) at page 61. See also the individual country reports detailed in Plant (2002a,b,c,d) at http://www.adb.org/Documents/Reports/Indigenous_Peoples/default.asp

¹³¹ See <http://www.adb.org/Evaluation/reports.asp>

¹³² AIPTN 2000 *op. cit.* See also Gain (2002).

¹³³ Plant 2002 at page 53.

¹³⁴ Chashma Inspection Request, prepared by CRBIP Affectees Committee, Damaan Development Organization, HIRAK Development Center, SUNGI Development Foundation and Action Aid- Pakistan, November 2002.

In other cases, there are signs that some elements of the policy are being implemented. For example, several projects in the Philippines and Indonesia have undertaken initial social assessments, which have helped identify key indigenous issues. Some projects in these countries have also prepared an Indigenous Peoples Development Plan (IPDP) - although the quality of implementation has been low due to inadequate staff training and inadequate technical capacity.¹³⁵ The poverty review concluded that the ADB could do much more to promote poverty reduction for indigenous peoples in the region through support for:

- rapid practical measures to prevent further land and resource dispossession;
- land restitution programmes where required e.g., Indonesia
- participatory community demarcation of their traditional lands;
- land regularisation and technical programmes on indigenous land policy and traditional resource management ;
- inclusion of indigenous issues in overall policy dialogue and Country Strategy and Programme papers;
- national-level participatory reviews of policies to identify where sectoral policies should be modified/coordinated to promote effective poverty reduction (land, forestry, conservation, health, education, government etc.);
- formulation of national policies on indigenous peoples and poverty reduction informed by international standards, including ILO Convention 169 and other relevant UN instruments;
- establishment of consultation mechanisms at all levels to enable the participation of indigenous peoples in decision-making that may affect their lands and communities.¹³⁶

Ineffective accountability and complaints procedures:

Like the World Bank and the IDB, the ADB has been criticised for the failings of its centralised Independent Inspection Function which has so far proven to have a poor record of transparency and to suffer from unclear eligibility criteria for the submission and investigation of complaints by aggrieved citizens. NGO inputs to the ADB's current review of its inspection function have called for new accountability and appeals mechanisms at the programme and project level.¹³⁷

2.5 African Development Bank

The African Development Bank does not possess a policy on indigenous peoples. It is noteworthy, however, that the Bank's general policy on good governance notes the importance of communal land ownership and property rights and the need to protect marginal and vulnerable groups.¹³⁸ In 2002, the Bank's Sustainable Development and Poverty Reduction Unit (PSDU) began a processes to develop an operational policy on Involuntary Resettlement.

¹³⁵ Plant 2002 at pages 57,62 and 69.

¹³⁶ Plant 2002 at pages 63-70.

¹³⁷ BIC (2003b) at section III, paragraph 1.

¹³⁸ <http://www.afdb.org/projects/policies/pdf/governance.pdf>

2.6 United Nations Development Programme

The UNDP adopted a policy statement on indigenous peoples in August 1991 (Box 12). This policy has the status of non-binding guidelines. However, they may become binding once the guidelines are incorporated into UNDP's next revision of its formal operational guidelines (last updated in 1999) – though this review has not been able to confirm this assumption.¹³⁹ Policy formulation was based on discussions with UNDP staff and indigenous peoples' organisations over several years, as well as consideration of international standards on the rights of indigenous peoples and of indigenous peoples' declarations on different topics.¹⁴⁰

The 2001 policy statement also drew on an excellent comprehensive internal desk-based survey of existing multilateral and bilateral policies targeting indigenous peoples and lessons from their implementation. The survey and consultation with indigenous peoples generated a number of important recommendations – including the need for any UNDP policy to focus on respect for the *rights* of indigenous peoples and adopt a bottom-up approach.¹⁴¹

Policy Strengths:

- Source of standards is existing and emerging international human rights and environmental standards;
- Recognises the need for UNDP policy and principles to be consistent with and respect international standards on the rights of indigenous peoples;
- Adopts an approach based on respect for human rights;
- Applies a bottom-up approach based on the priorities of indigenous peoples themselves;
- Recognises the right of indigenous peoples to free and prior informed consent to development plans and activities that may affect their lands;
- Linked to other related UNDP policies such as its policy on human rights;¹⁴²
- Strong general principles relating to participation, gender and intellectual property rights;
- Provides some (albeit limited) specific operational guidance to country staff.

¹³⁹ UNDP (1999) *UNDP Programming Manual* at <http://www.undp.org/bdp/pm/> See also manual index at <http://www.undp.org/bdp/pm/chapters/index.pdf>

¹⁴⁰ UNDP (2001) *UNDP and Indigenous Peoples* - at section I paragraph 4.

¹⁴¹ Smidt-Nielsen, F (1999) *Guidelines and policies for support to Indigenous Peoples: multilateral and bilateral agencies A comparative study to orient UNDP's policy formulation process*, draft report at pages. 27-28. <http://www.undp.org/csopp/CSO/NewFiles/Guidelong.doc> The policy also drew on a summary review of past UNDP projects and programmes targeting indigenous peoples. See UNDP (1999) *An Assessment of UNDP's Activities Involving Indigenous Peoples Draft Abbreviated Version*, UNDP – unpublished manuscript.

¹⁴² UNDP (1998) *Integrating Human Rights with Sustainable Development* UNDP - <http://magnet.undp.org/Docs/policy5.html>. This policy document notes that UNDP's rights-based approach to sustainable human development will, alongside other rights, focus on the "Rights of minorities and indigenous peoples. Among them rights to maintain languages and cultures and rights of distinct peoples living in distinct regions to self-determined development and control of ancestral lands, which are often the basis of community organization, culture and ways of life."

Policy weaknesses:

- Lacks binding operational provisions or rules for respecting and securing land and resource rights;
- Only contains indirect protection from forced resettlement;
- No clear instructions nor guidance to staff on the steps necessary to implement the policy in practice (e.g., By what actions may land rights be respected? How is the provision on prior informed consent to be applied?);
- No clear-cut benchmarks or mandatory preconditions that must be met before UNDP will approve or engage in a project affecting indigenous peoples and their territories (despite a strong recommendation to this effect made in its 1999 in-house study);
- There are no requirements for social and environmental assessments prior to UNDP development interventions (they are only recommended)
- No accountability mechanism to back up the policy and unclear lines of responsibility for policy compliance and effective implementation.

UNDP policies, activities and programmes affecting indigenous peoples:

As well as its specific policy on Indigenous Peoples, the UNDP also has a general policy on *Integrating Human Rights with Sustainable Human Development* which was adopted in 1997. With a view to implementing this policy, UNDP and the Office of the High Commissioner for Human Rights launched their joint *Human Rights Strengthening Programme* (HURIST) in 1999. This programme has involved several national workshops and projects at the country-level which aim to promote the mainstreaming of human rights in development planning. A central part of this programme to implement the UNDPs human rights policies has been support for the elaboration of National Human Rights Action Plans (NHRAPs).¹⁴³

UNDP's involvement as a key player in international sustainable development initiatives means that many of its programmes and activities have a potential impact on indigenous peoples and their territories. For example, UNDP is active in supporting the development and adoption of new World Bank-assisted Poverty Reduction Strategies (PRSPs) in highly indebted developing countries.¹⁴⁴ UNDP also jointly administers with the World Bank and UNEP the Global Environment Facility (GEF) whose grants to developing country governments finance the establishment of large protected areas. The GEF also supports so-called "Ecodevelopment" projects that can adversely affect the rights of indigenous communities because in practice these projects involve resettlement and impose restrictions on local access to natural and cultural resources.¹⁴⁵ On a smaller scale, the UNDP also oversees the GEF's Small-grants Programme (SGP) which was set up in 1992 in order to support community-based conservation initiatives. UNDP has also been involved in traditional knowledge programmes and in partnerships with indigenous peoples' organisations.¹⁴⁶

¹⁴³ Weerelt van, P (2001) at pages 2-3

¹⁴⁴ <http://www.undp.org/mainundp/propoor/propoor.htm> See also UNDP(2002) *UNDP support for Poverty Reduction Strategies: the PRSP countries*, UNDP, November 2002 – see <http://www.undp.org/mainundp/propoor/docs-propoor/PRSPFinal2001.doc>

¹⁴⁵ Young, Z (2002) *A New Green Order: the World Bank and the politics of the GEF* Pluto Press, London and Sterling (Virginia). See also Griffiths and Colchester (2000).

¹⁴⁶ <http://www.undp.org/csopp/CSO/NewFiles/ipundp.html> For information on the GEF Small-Grants Programme, see <http://www.gefsgp.org/about.html> . See also UN (2001b) at page 2

BOX 12: *UNDP and Indigenous Peoples: a policy of engagement* (August 2001)

Available at: <http://www.undp.org/policy/docs/policynotes/IP%20Policy%20English.pdf>

Standards source: International instruments on human rights and other rights of indigenous peoples.

Approach: Human rights; rights-based development; poverty reduction; partnerships.

Some key provisions

Policy scope:

- > Based on definitions of indigenous peoples in international law and on self-identification [I. Box 2]

Baseline studies:

- > Social and environmental assessments prior to programme project implementation are “recommended” [VI.C.62]

International standards:

- > Sections II.12 and II. 13 recognise the need to respect international standards on the rights of indigenous peoples, such as those set out in ILO 169 and the CBD.

Land and resource rights:

- > “UNDP promotes the recognition of indigenous rights to lands, territories and resources; laws protecting indigenous lands; and the inclusion of indigenous peoples in key legislative processes...” [V.A.29.]
- > Recognises that poverty reduction strategies involving indigenous peoples should focus on and tackle: “...issues with respect to ownership and use of land and natural resources.” [V.B.35] and “...the profound relationship indigenous peoples have to their environment, land and resources...(and)... Respects ... “livelihoods based on pastoralism, hunting and gathering, and shifting cultivation lifestyles” [V.D.43]

Participation and consent:

- > “By incorporating the “right to development” in its work, UNDP fosters the full participation of indigenous peoples in its development processes and the incorporation of indigenous perspectives in development planning and decision-making.” [V.A.27]. See also VI.B.47.
- > “Consistent with United Nations conventions such as ILO Convention 169, UNDP promotes and supports the right of indigenous peoples to *free, prior informed consent* with regard to development planning and programming that may affect them” [VA.28 – emphasis added]
- > “For projects involving indigenous peoples and any project that may affect indigenous peoples, consultation should include representatives from local and regional IPOs, ensure gender and generational balance... and use culturally appropriate methods that allow indigenous peoples to express their views and preferences” [VI.C.60]
- > “As indigenous women tend to experience triple discrimination (poor, female, and indigenous), it is critical that they play a central role in decision-making processes as well as in the design, planning, implementation and evaluation of relevant programmes and projects. UNDP stresses the importance of empowering indigenous women, and promoting gender equity within indigenous communities” [VI.C.61]
- > “Special attention is needed on issues of resettlement...and any form of assimilation or integration by other cultures or ways of life imposed on them without free, prior informed consent” [V.C.41]

Intellectual Property:

- > “Projects that gather and use indigenous customary knowledge should include measures that promote the recognition of this knowledge as intellectual and cultural property, as well as measures that prevent the dissemination of this knowledge without prior informed consent of the proprietors...” [VI.C.63]

Operational Guidance or instructions to staff:

- > Develop “locally relevant strategies” and allocate resources [VI.A.47]
- > Map indigenous peoples and their organisations and identify their priority issues [VIC.59]
- > Undertake legal surveys of regulatory frameworks [VIB.51]
- > Establish Civil Society Committees and include indigenous peoples’ representatives [VIB.52];
- > Ensure indigenous peoples’ representatives have access to country office staff [VI.C.58]
- > Involve indigenous peoples in the Common Country Assessment (CCA) process, the UNDAF and the monitoring of Millennium Development Goals (MDG) and evaluations of PRSPs [VI.B.54 and 55]

Type of standards: Soft and non-mandatory. A set of principles that are intended to give guidance to staff.

Accountability mechanism: No formal in-house or independent mechanism linked to this specific policy. Concerns can be raised informally through communication with UNDP country office staff, UNDP Headquarters or via its Civil Society Committee (which includes several indigenous representatives). Formal complaints can be raised in relation to the mandatory UNDP Information Disclosure Policy - http://www.undp.org/cso/pdf/pubinf_dispol.pdf - through its *Public Information and Documentation Oversight Panel* – <http://www.undp.org/csopp/idptor2.htm>

Implementation review: No evaluation of policy application as the policy was only recently adopted.

In the mid-1990s, these activities involved a number of influential regional workshops on intellectual property rights, indigenous knowledge and biodiversity that were jointly organised with indigenous peoples' organisations.¹⁴⁷ More recently, UNDP has developed an Indigenous Knowledge Programme (IKP), which involves a limited number of UNDP-funded projects in Asia and South America. It is noteworthy that the IKP Steering Committee features eight regional co-ordinators who each represent local indigenous peoples' organisations.¹⁴⁸ Most UNDP projects and programmes do not target indigenous peoples, but rather have broad social development objectives. One exception to this general approach is the SE Asia Highland Peoples Programme (HPP) covering the Mekong Sub-region, which includes the territories of 11 million indigenous people in Lao PDR, Vietnam, Cambodia and Thailand.¹⁴⁹

Evaluation, monitoring and accountability:

It is too early to evaluate the quality of implementation of UNDP policy towards indigenous peoples. It is expected that when an evaluation is carried out, the assessment will be done in a participatory manner involving indigenous peoples' organisations as required under the policy itself (sections VI.B.54 and 55). In the meantime, indigenous organisations and communities may raise issues or concerns about UNDP activities through its new Civil Society Committee.¹⁵⁰

2.7 Other specialised UN agencies

Other than UNDP, this review has not identified UN agencies with specific policies on indigenous peoples. However, a number of agencies have projects directly or indirectly affecting indigenous communities and several have been involved in different standard-setting and policy formulation processes of relevance to indigenous peoples. The remainder of this section briefly assesses these activities and policy discussions. Given the extensive and diverse nature of UN agency portfolios and policy processes, the review does not claim to be exhaustive.

2.7.1 United Nations Environment Programme (UNEP)

UNEP does not apply a specific policy on indigenous peoples, though many of its activities and programmes are of relevance to indigenous communities and their territories. After the Earth Summit in 1992 UNEP was mandated to ensure that States recognise and foster the traditional knowledge of indigenous peoples and that indigenous peoples share in the benefits from the use of their traditional knowledge.¹⁵¹ UNEP is also one of the three implementing agencies for the Global Environment Facility (GEF) for which it administers the Scientific and Technical Advisory Group – a group which lacks expertise in indigenous issues.

¹⁴⁷ For details of the recommendations and proposals stemming from these UNDP workshops, see Appendices 9, 10, and 11 in Posey (1996) at pages 215-225

¹⁴⁸ UNDP's central Civil Society Organisation (CSO) Advisory Committee to the UNDP Administrator has one indigenous peoples' representative - UNDP (2001b) at page 3.

¹⁴⁹ UN (2001b).

¹⁵⁰ Due to time and resource constraints, this review has not examined evaluation reports for specific UNDP projects and programmes affecting indigenous peoples.

¹⁵¹ Leaflet No. 10: Indigenous Peoples and the Environment" in UN (2001a) *op. cit.*

UNEP supports research and policy dialogue relating to indigenous peoples and environmental conservation. Indigenous representatives and experts took part in UNEP's Global Biodiversity Assessment Project, undertaken as part of a programme on the "Human Values of Biodiversity". This project produced a final report underlining the close interconnections between indigenous peoples' culture and spiritual beliefs and their attachment to their environment.¹⁵² UNEP also acted as a key sponsor for the progressive World Commission on Dams process and in 2000 publicly committed itself to promoting adoption of these new standards by UN agencies [section 1.3.2.3].¹⁵³ In this context, it has been the lead agency for a Dams and Development Project geared towards disseminating the WCD report in different languages and sponsoring national-level dialogues on dams and development.¹⁵⁴

In recent years, UNEP has sponsored both intergovernmental and indigenous meetings, which have recognised that any efforts to apply traditional indigenous knowledge and practices for conservation and sustainable development must include measures to maintain the land and territorial security of indigenous peoples.¹⁵⁵ At the recent 4th International Conference of the International Alliance of Indigenous-Tribal Peoples of the Tropical Forests in November 2002, the Director of UNEP, Klaus Toepfer, backed indigenous peoples' demands for improved legally binding development standards, to protect indigenous livelihoods and culture from the adverse impacts of infrastructure and tourism projects, by introducing requirements for 'cultural impact assessments' in line with existing rules on environmental assessments.¹⁵⁶

UNEP jointly convened with UNESCO a high-level Roundtable on *Cultural Diversity and Biodiversity for Development* held at the World Summit on Sustainable Development in 2002. The meeting, which involved government, indigenous peoples, UN agencies and academics, highlighted the need to: "...protect and revitalize traditional knowledge coming from local and indigenous communities" through the protection and recognition of indigenous territories.¹⁵⁷ At the roundtable, indigenous participants again called for full recognition of indigenous peoples' land rights and their right to free prior and informed consent to decisions and actions that may affect them (section 1.2.2).¹⁵⁸ Following WSSD, senior UNEP officials announced their intention to include an operational component on 'Environment and Cultural Diversity' in UNEP's 2004-2005 work programme. However, this plan was blocked by government members of its governing council in February 2003 on the grounds that the issue of cultural diversity is 'beyond the mandate' of UNEP. The agency has instead been asked to work in collaboration with UNESCO to survey the current state of national and international activities relating to environment and cultural diversity.¹⁵⁹

¹⁵² UNEP (1999) *op. cit.*

¹⁵³ WCD (2000) *at* page 316

¹⁵⁴ <http://www.unep-dams.org/>

¹⁵⁵ See references to the 'integral and indivisible' character of the 'territory-culture-biodiversity complex' that underpins indigenous knowledge and traditional conservation practices *in* UNEP (2001) *Manifiesto por la Vida: por una ética para la sustentabilidad* *at* paragraphs 32, 38, 42 and 43.

<http://www.rolac.unep.mx/educamb/esp/mantexto.htm>

¹⁵⁶ UNEP (2002a)

¹⁵⁷ UNEP 2002b *at* paragraph 3.

¹⁵⁸ Camac (2002) and Menchu (2002) *op. cit.*

¹⁵⁹ IISD (2003) *at* page 7

2.7.2 International Fund for International Development (IFAD)

IFAD does not possess a formal operational policy or internal guidelines on indigenous peoples. However, IFAD's approach to indigenous peoples and development has been set out in a number of IFAD documents. Its 'institutional summary' compiled in 1996 affirms that IFAD intends to support self-development and recognises that indigenous peoples must be treated as distinct from peasant populations in agricultural development.¹⁶⁰ Land tenure issues are recognised as critical. IFAD consequently claims not to support projects that lack safeguards to secure indigenous ownership rights over their lands and territories.

IFAD considers that respect for indigenous peoples' rights does not constitute a form of privileged treatment, but rather a levelling process that aims to recognise inherent rights and rectify a history of marginalisation and discrimination.¹⁶¹ Although, IFAD has no official internal guidelines, its staff informed the researchers who conducted the 1999 UNDP survey (of UN agency standards relating to indigenous peoples) that IFAD's definition of indigenous peoples and its operational standards are consistent with those set out under ILO Convention 169 and other related instruments of the United Nations.¹⁶²

IFAD has an explicit policy of working in collaboration with other UN and multi-lateral development agencies including the ILO, World Bank, IDB and the *Corporación Andina de Fomento* (CAF). IFAD makes loans or grants to these agencies which implement and manage the projects. It also issues grants to innovative projects and to indigenous peoples' organisations and NGOs.

In 1994, a detailed evaluation of IFAD-funded operations in indigenous territories in Latin America produced an extensive list of recommendations for improving development effectiveness. However, these recommendations have not been formally adopted by the institution. In the meantime, IFAD regional offices in Latin America and Asia continue to support several programmes and projects that directly target indigenous peoples and support the development of sustainable livelihoods and 'micro-enterprises'.¹⁶³ IFAD's programmes have resulted in a number of further lessons and recommendations for agencies seeking to support land reform and indigenous self-development:

- Territorial security is an essential precondition for indigenous self-development;
- Self-development projects should incorporate capacity-building components in indigenous rights and territorial defence as well as training in project administration;
- Land tenure should be based on customary regimes and should aim to secure inalienable communal title (as appropriate);

¹⁶⁰ FIDA (1996) *Publicación sobre Pueblos Indígenas y Organizaciones Internacionales – el Fondo Internacional de Desarrollo Agrícola – Resumen Institucional del FIDA* cited in Smidt-Nielsen (1999) at page 61

¹⁶¹ Colchester (2000) at page 29

¹⁶² Smidt-Nielsen (1999) at page 62.

¹⁶³ PRAIA 1998a at pages 99-110. See http://www.ifad.org/evaluation/public_html/eksyst/doc/tag/tag234bs.htm

- Indigenous peoples should be involved in project and programme administration;
- Projects should where possible work with community-level and representative institutions;
- Application of ‘model’ projects should be treated with caution and projects should be designed in accordance with local aspirations and conditions;
- Commercialisation projects must not create dependence nor undermine subsistence livelihoods.¹⁶⁴

Repeated email requests sent to IFAD as part of this review asking for their current position on developing an indigenous peoples policy have not received any reply.

2.7.3 Food and Agriculture Organisations (FAO)

FAO has not developed or adopted any policy instrument on indigenous peoples and has advised in recent years that its institutional position is that indigenous peoples should not be distinguished from ‘farmers’ or the ‘rural poor’.¹⁶⁵ As a consequence, the term ‘indigenous peoples’ is not usually found in FAO documentation and this review has not found FAO field programmes which exclusively target indigenous communities. Indigenous peoples’ organisations have criticised FAO for its decision to treat indigenous peoples’ and farmers’ rights as interchangeable.¹⁶⁶

Despite these problems, the FAO has adopted several declarations and guidelines for specific areas of relevance to indigenous peoples’ rights. For example, the 1979 *Peasant’s Charter*, though not without problems (like its work programme that advocates the settlement of ‘empty’ public lands), the Charter does urge governments to “Preserve and adapt or create systems of broad-based community control and management of land and water rights in accordance with development needs”. It also calls on governments to “ensure the conservation and management of fishery and forestry resources through arrangements with local communities.”¹⁶⁷

Through resolution 8/93 of its 27th session, the FAO conference adopted the *International Code of Conduct for Plant Germplasm Collecting and Transfer* in November 1993. These guidelines advise governments and other interested parties to ensure that policies and practices for the collection of germplasm should “respect local customs and traditions, values, and property rights...and work with the agreement of and in co-operation with local communities”.¹⁶⁸ More recently, public FAO statements on forest policy acknowledge that secure property rights are an essential precondition for sustainable forest management.¹⁶⁹

¹⁶⁴ Colchester *op. cit.* at page 30 and PRAIA (1998a), (1998b).

¹⁶⁵ cf. Smidt-Nielsen (1999) at page 88

¹⁶⁶ Ibid.

¹⁶⁷ *The Peasants’ Charter* at II.B(ii) and IIE(iv) - <http://www.fao.org/docrep/U8719E/u8719e03.htm>

¹⁶⁸ http://www.fao.org/biodiversity/CCPGCT_en.asp

¹⁶⁹ FAO (2003).

FAO also runs projects and programmes that directly or indirectly affect indigenous peoples. For example, the FAO runs a land tenure programme, which aims to protect the land rights of rural populations. In 2001, this programme commissioned a survey of indigenous land tenure issues in Africa, Asia and Latin America.¹⁷⁰ Other FAO programmes that relate to indigenous peoples include those on food security¹⁷¹ and the Global Plan of Action for the Conservation and Sustainable Utilisation of Plant Genetic Resources.¹⁷²

Until recently, the FAO also supported a *Forest, Trees and People Network* that produced a regular newsletter and funded innovative community forest management projects in Latin America, Africa and Asia. The programme was closed however due to its controversial support for community opposition to mainstream forestry and conservation schemes.¹⁷³

Several email queries sent to the FAO as part of this survey vis-à-vis the current institutional position on indigenous peoples and development have not received any response.

2.7.4 World Health Organisation (WHO)

The World Health Organisation has not formulated a specific policy on indigenous peoples. Notwithstanding the fact that previous surveys of UN agencies and indigenous peoples report that WHO broadly recognises the need to adopt a comprehensive policy,¹⁷⁴ this review has not identified any clear policy formulation process, though the agency does have a general and proactive strategy to combat health problems through partnerships with ‘vulnerable groups’, including indigenous peoples.¹⁷⁵ However, in line with the General Assembly resolution 50/157, which adopted a programme of activities for the International Decade (see section 1.0), WHO has its own focal point on indigenous peoples (section 5.0).

The agency has also engaged in consultations with the UN Working Group on Indigenous Populations and reports each year to the World Health Assembly (WHA) on progress in activities relating to the International Decade. In this regard, in the 51st meeting of the WHA in 1998, the Director General of the WHO highlighted the relevant provisions on indigenous health in the UN Draft Declaration on the Rights of Indigenous Peoples. Since then, a number of WHO resolutions refer to the need for special measures to address indigenous health problems and to reduce the gap in health service provision for indigenous communities, while also respecting their own traditional health systems.¹⁷⁶

¹⁷⁰ Colchester (2001) http://forestpeoples.gn.apc.org/Briefings/Landrights/fao_land_tenure_report_dec01_eng.htm See also: http://www.fao.org/sd/IN1_en.htm

¹⁷¹ http://www.fao.org/tc/tca/rpfs/index_en.asp . See also <http://www.fao.org/righttofood/en/index.html>

¹⁷² <http://www.fao.org/WAICENT/FAOINFO/AGRICULT/AGP/AGPS/Pgrfa/gpaeng.htm>

¹⁷³ Colchester, M et al (2003) *Learning Lessons from International Community Forestry Networks: synthesis report* CIFOR, Bogor

¹⁷⁴ Smidt-Nielsen (1999) at page 51

¹⁷⁵ See, for example, http://www.who.int/substance_abuse/pages/docs.html#Indigenous1

¹⁷⁶ WHA Resolutions 49.26 and 51.24 .

Indigenous peoples have been pressing the WHO for a number of years to back up such positive statements with a properly funded and action-orientated plan on indigenous health. In 2001, the 54th meeting of the WHA requested the Director General to develop and complete a 'global plan of action' on the health of indigenous peoples.¹⁷⁷ This programme is still being developed in 2003. WHO officials blame delays in the finalisation of the plan on problems with the definition of indigenous peoples and the corresponding lack of reliable health statistics. The agency reports that it is developing its own working definition of indigenous peoples. In the meantime, WHO uses definitions set out in ILO Convention 169.¹⁷⁸

As well as developing a global plan of action, WHO has worked with different UN agencies and multilateral bodies to deliver health care to indigenous communities. One example of a targeted regional health programme is the joint WHO-UNEP Circumpolar Health and Environment of Indigenous Peoples Programme, which has been welcomed as a progressive programme by indigenous organisations.¹⁷⁹

WHO has also undertaken initiatives on indigenous health in collaboration with the Pan American Health Organisation (PAHO) under its *Initiative on the Health of Indigenous People of the Americas*. This work has involved consultative workshops on health problems and possible solutions, the compilation of health statistics and the participatory preparation of 'health plans' for indigenous communities in Latin American countries. PAHO has involved indigenous organisations in the review of its programme, which has revealed that it has suffered from a lack of resources, lack of baseline data and deficient levels of 'systematic' indigenous participation.¹⁸⁰ Smidt Nielsen (1999) reports that there are no formally adopted standards under this regional programme, but WHO and PAHO programmes aim to:

- be consistent with international standards on the rights of indigenous peoples;
- foster policy dialogue with governments on indigenous health;
- promote national-level health plans/programmes targeting indigenous peoples;
- apply a cross-sectoral approach in co-ordination with other agencies and donors;
- involve indigenous communities and their organisations in the identification of their health needs;
- involve indigenous health care professionals in the design, implementation and evaluation of field projects;
- respect and promote the preservation of indigenous traditional healing and medicinal knowledge;
- develop projects and programmes in a culturally appropriate manner.¹⁸¹

¹⁷⁷ WHA Resolution 54.16.

¹⁷⁸ WHO (2001) and (2002a).

¹⁷⁹ *Geneva Declaration on the Health and Survival of Indigenous Peoples*
<http://www.faira.org.au/lrq/archives/199912/stories/geneva-declaration.html>

¹⁸⁰ Smidt-Nielsen (1999) at pages 55-56

¹⁸¹ For a detailed discussion and analysis, see Smidt-Nielsen (1999) at pages 54-58

This review finds evidence that WHO is finding it difficult to apply these (informal) principles in a consistent manner beyond specific targeted programmes. For example, the recent 2002-2005 WHO strategy on traditional medicine fails to highlight the various hard and soft international standards relating to access, use and protection of indigenous and traditional knowledge. The Strategy makes only incidental mention of intellectual property rights and makes no reference to relevant key standards under Article 8j of the CBD.¹⁸²

Indigenous organisations and activists note that the WHO sometime lacks transparency and has no mechanisms to make the body accountable to citizens and rights holders. For example, the recent process to elaborate guidelines for joint investigation between research institutions and indigenous peoples (draft completed in April 2002) has been criticised for being a relatively closed process with little transparency. There have also been problems with WHO public consultations. In 1997, a group of indigenous leaders and campaigners formed their own Indigenous Health Committee to advocate reforms of the WHO. This group was successful in persuading the WHO secretariat to carry out a targeted consultation with indigenous peoples in 2000 and 2001. The process resulted in a very interesting draft report with many recommendations. However, the WHO Secretariat has reportedly distanced itself from the report and it remains unpublished. Indigenous participants who took part in the consultation are disillusioned with the lack of official recognition of their inputs and the unaccountable way in which the secretariat have not followed up on the consultation.¹⁸³

2.7.5 United Nations Educational, Scientific and Cultural Organization (UNESCO)

UNESCO does not have an operational policy on indigenous peoples. However, it has adopted a set of key principles which it aims to promote in the formulation of its policies, programmes and field activities. Under these principles, the agency will 'encourage' the:

- adoption of national cultural policies which highlight the cultural resources of indigenous people and acknowledge their cultural rights;
- protection of indigenous heritage, especially intangible heritage;
- active participation of indigenous communities in the management of World Heritage sites and holy sites;
- provision of education incorporating indigenous languages into curricula;
- participation of community members in democratic bodies at the local and national levels;
- provision of media infrastructure and communication facilities tailored to indigenous needs;
- recognition of the important links between indigenous and scientific knowledge aimed at sustainable development and poverty reduction.¹⁸⁴

¹⁸² WHO (2002) *WHO Traditional Medicine Strategy 2002-2005* WHO, Geneva at pages 4 and 36

¹⁸³ Roy Laifungbam, pers comm. 2003.

¹⁸⁴ UNESCO (2001a) at paragraph 39.

UNESCO has recognised the connection between indigenous lands and cultural integrity, as well as the need to protect both, numerous times in the past. For example, the 1981 UNESCO *Declaration of San Jose on Ethno-Development and Ethnocide in Latin America*,¹⁸⁵ provides that:

“For Indian peoples, the land is not only an object of possession and production. It forms the basis of their existence, both physical and spiritual, as an independent entity. Territorial space is the foundation and source of their relationship with the universe and the mainstay of their view of the world.”

It continues that:

The Indian peoples have a natural and inalienable right to the territories that they possess as well as the right to recover the land taken away from them. This implies the right to the natural and cultural heritage that this territory contains and the right to determine freely how it will be used and exploited.

In accordance with its formal mandate to protect cultural heritage, UNESCO promotes the effective implementation of standards of relevance to indigenous peoples relating to cultural property rights under the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*¹⁸⁶ and the *Convention Concerning the Protection of the World Cultural and Natural Heritage*. Paragraph 14 of the *Operational Guidelines for the Implementation of the World Heritage Convention* notes the importance of local participation in defining heritage sites. Paragraphs 21 and 64(4a,b) of the same guidelines require UNESCO and its partner agencies to assess the management plan for the area and ensure there is clarity about the ownership and legal status of the property being proposed.¹⁸⁷

Despite the existence of these potentially useful standards, indigenous peoples' organisation have criticised the whole World Heritage system for failing to properly recognise indigenous and land and territorial rights in practice, as well as its lack of proper consultation procedures regarding existing and new nominations for the World Heritage List. In response to these legitimate criticisms, UNESCO and the World Heritage Committee have in recent years been considering the establishment of a World Heritage Indigenous Peoples Council of Experts (WHIPCOE) to help resolve indigenous rights issues under the World Heritage framework.¹⁸⁸

As part of its work on international standards, UNESCO has sponsored policy dialogues and standard-setting processes relating to culture, education and science, including a series of meetings to develop draft guidelines for the protection of the heritage of indigenous peoples that began in 1995 and is ongoing. In 2001, the member states of UNESCO adopted a *Universal Declaration on Cultural Diversity*, which affirms that cultural diversity is one of the ‘roots of development’ and that:

¹⁸⁵ UNESCO Doc. FS82/WF.32 (1982).

¹⁸⁶ On the potential and limitations of this Convention in relation to indigenous peoples' rights, see Posey and Dutfield (1996) at pages 115-116

¹⁸⁷ UNESCO (1994). See <http://whc.unesco.org/opgutoc.htm>

¹⁸⁸ UNESCO (2001b) *World Heritage and Indigenous Peoples* <http://unesco.org/whipcoe/>

“The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples...”¹⁸⁹

The same Declaration also sets out an Action Plan for its implementation in which the Member States of UNESCO commit themselves to ‘deepening the international debate on cultural diversity, particularly in respect of its links with development and its impact on policy-making, at both the national and international levels...’.¹⁹⁰ As part of its efforts to fulfil this goal, UNESCO co-sponsored with UNEP a roundtable discussion at WSSD on “Cultural Diversity and Biodiversity for Sustainable Development” which - among other issues - highlighted the need to secure indigenous territories for the maintenance of traditional knowledge, biological diversity and alternative models of development (section 2.6.1 above).

In addition to standard-setting activities, UNESCO is also involved in policy dialogues and development projects in the areas of intercultural bilingual education, media communications¹⁹¹, indigenous knowledge, natural resource management¹⁹², sustainable livelihoods, cultural resource mapping and conservation.¹⁹³ Of particular relevance to this review is the joint UNESCO-Danida Programme on Human Rights which has supported projects on the “Acquisition of Social and Cultural Rights by Indigenous Communities in the Amazon Region in Ecuador” (1997-99), “Human rights and Sustainable Development for the Shuar Indigenous People” (2000-present), “Indigenous Peoples and Human Rights in Guatemala” (1997-2000) and “Local Indigenous Management in Bolivia” (1999-2000)¹⁹⁴. All these projects have involved training for indigenous leaders in the field of the human rights.¹⁹⁵

UNESCO also runs the global Man and Biosphere (MAB) programme, which in recent years has involved work on the resource rights of indigenous communities in sustainable livelihood and conservation projects within and adjacent to protected areas designated as Biosphere reserves.¹⁹⁶ Though Biosphere reserves have not been without problems in relation to their impacts on indigenous communities, there is now a growing acceptance that indigenous peoples’ land and resource rights must be recognised in biosphere reserves superimposed on their traditional territories and that sacred sites and traditional knowledge must be respected in such protected areas.¹⁹⁷

2.7.6 The United Nations Children’s Fund – UNICEF

UNICEF does not have a specific policy on indigenous peoples. However, much of its work targets indigenous communities and the agency has committed itself to promoting Article 30 of the Convention of the Rights of the Child, which recognises

¹⁸⁹ UNESCO (2001c) at Article 4.

¹⁹⁰ Ibid. at para. 1. http://www.unesco.org/culture/pluralism/diversity/html_eng/index_en.shtml

¹⁹¹ <http://www.unesco.org/webworld/com/media/media03.shtml>

¹⁹² <http://www.unesco.org/mab/sustainable/chap2/2boxIndonesia.htm>

¹⁹³ See UNESCO (2001a).

¹⁹⁴ <http://www.unesco.org/danida/bolivia.htm>

¹⁹⁵ Ibid. at paras. 24 -25. See also Posey (1996) at pages 86-92

¹⁹⁶ <http://www.unesco.org/mab/sustainable/chap2/2boxIndigenous.htm>

¹⁹⁷ <http://www.unesco.org/mab/sustainable/chap2/2cultural.htm>

the right of indigenous children to enjoy their traditional culture, language and religion. To this end, the Executive Board of UNICEF adopted a resolution in 1991 that commits the agency to improving the way its projects and programmes promote the rights of the child for indigenous children. Several UNICEF's poverty reduction programmes in Thailand, the Philippines, Bolivia, Colombia, Ecuador, Peru and Venezuela have components which aim to improve the status of indigenous children.¹⁹⁸ UNICEF's country programmes also address issues of special relevance for indigenous children, including child labour, education, health and sexual exploitation.¹⁹⁹

2.7.7 United Nations High Commission for Refugees – UNHCR

The UNHCR advised the Secretary General of the UN in 1996 that in planning assistance to indigenous peoples, the agency referred to its own guidelines on 'people-orientated planning'.²⁰⁰ In 1998, the agency presented a discussion paper to indigenous participants at a meeting of the UN Working Group on Indigenous Populations stating that the agency aims to address the causes of displacement, apply culturally appropriate consultation with indigenous peoples and promote the cultural integrity of indigenous refugees. In the same paper, the agency advises that it promotes awareness among governments of international instruments on the rights of indigenous peoples. However, in the late 1990s there was no indication that UNHCR field staff were aware of any policy or the principles set out in the 1998 discussion paper.²⁰¹

2.8 Indigenous Peoples Fund

The *Fund for the Development of Indigenous Peoples of Latin America and the Caribbean* was created in 1992 as a multi-lateral institution for the promotion of indigenous development and dialogue between indigenous peoples and governments in Latin America and the Caribbean. When the Fund was established, indigenous peoples identified four priority themes for its investments and activities: ancestral lands, indigenous institutions, indigenous rights, and indigenous culture.²⁰² Overall, the Fund aims to promote indigenous *ethnodevelopment*, which is defined as "sustainable long-term development that is consistent with indigenous values and priorities, and recognizes indigenous rights to execute and own their projects."²⁰³ A key goal of the Fund is therefore to help indigenous peoples formulate and secure funding for their own development proposals. To date, a total of 21 Northern and Southern countries have ratified the Fund's agreements. As noted above, donor countries like Germany, Belgium, Spain, Denmark, Japan and the USA have been active in supporting specific projects under the Fund or have financed the establishment of dedicated trust funds to support the Fund's work.²⁰⁴ The Fund also receives financial contributions from Latin American countries.

¹⁹⁸ UN (2001e).

¹⁹⁹ Ibid.

²⁰⁰ UNCHR (1994).

²⁰¹ Smidt-Nielsen (1999) at page 59.

²⁰² Deruyttere (1994).

²⁰³ Ibid.

²⁰⁴ See IF portfolio and the sponsoring development agencies at:

<http://www.fondoindigena.org/proyejec.htm> and <http://www.fondoindigena.org/proynuevos.htm>

Although in its early years the Indigenous Fund was criticised for being slow to establish concrete activities, in recent years the Fund has been able to organise and foster a number of *Instancias Consultivas Nacionales (ICNs)* in accordance with a key part of its mandate. Since 2000, 16 national consultation mechanisms have been established with representatives of indigenous peoples' organisations and governmental representatives from relevant departments as well as observers from donor agencies.²⁰⁵ Governmental participants in the ICN are accredited to the Fund, while indigenous participants may be either accredited members of the Fund or nominated by the national indigenous movement. The purpose of these ICNs is to meet periodically to discuss development issues and help indigenous organisations present their development proposals to governments and donors. In addition to national-level policy dialogue, the Indigenous Fund also supports a limited number of education and capacity-building projects.²⁰⁶

The Indigenous Peoples Fund does not have a formal operational policy on indigenous peoples and development. It does, however, apply a set of broad principles which are supposed to direct the Fund's institutional policies, priorities and projects. These principles recognise and respect:

- ethnic diversity and cultural identity as central to the self-determination of indigenous peoples and the right to self-identification;
- community traditions based on communal territories and ancestral forms of relations with the land and nature that seek to foster harmonious and sustainable relationships;
- indigenous peoples' right to enjoy without hindrance or discrimination all general citizenship rights so they may invert their long-term marginal situation and achieve an equitable and respectful development with identity in the coming years;
- indigenous peoples' human, social, economic and cultural rights recognising that the actual situation of these peoples is the result of a historical continuum of structural cultural discrimination that needs to be over-turned;
- the multifaceted reality of both rural and urban indigenous peoples linked to historical processes of exclusion, marginalisation and the loss of natural resources as well as the risks and challenges of new processes associated with globalisation;
- that indigenous peoples' ancestral life ways expressed in customs, customary law and their own institutions constitute community and family models, which should be integrated with the legislative framework of States within which these peoples are located.²⁰⁷

²⁰⁵ Boletín Indígena, Año 11(1), Enero 2003 at page 3.

²⁰⁶ See note 172.

²⁰⁷ <http://www.fondoindigena.org/icn.htm>

3.0 Bilateral Development Agencies

Since the early 1990s, a number of European bilateral donor agencies have adopted policies on indigenous peoples. Others do not possess dedicated policies, but do indirectly address indigenous issues in sectoral, regional or strategic policies on related issues such as human rights. The purpose of this section is to document both formal policies and guidelines used by different donors and any lessons learned in their implementation. Of the 13 agencies reviewed, only 4 have policies and only two of them are binding. None of the agencies have formal accountability mechanisms.

3.1 Danida

Denmark has been a leader among donor countries in developing and adopting an explicit policy towards bilateral aid and indigenous peoples. After a 1993 Danish Parliament resolution calling on the government to prepare a policy on increased development assistance for indigenous peoples, the Ministry of Foreign Affairs drew up a strategy, with some input from indigenous peoples, NGOs and academics, which was then adopted by the government in 1994. The strategy applies to the Danish Agency for International Development (Danida) and to the Danish agency for Co-operation for Environment and Development (Danced). The strategy constitutes a political statement, which sets out priorities for government negotiators in international fora and key areas for Danish development aid to indigenous peoples (Box 13).

Strengths

- Standards and principles are derived from progressive existing and emergent international standards, including ILO Convention 169 and the Draft UN Declaration on the Rights of Indigenous Peoples;
- Recognises the need to support indigenous peoples to secure rights to their territories and their traditional lands;
- Promotes the increased participation of indigenous peoples in standard-setting processes at the international level;
- Upholds and respects the human rights of indigenous peoples and contains provisions for withdrawing Danish aid where such rights are violated;
- Promotes the further adoption of guidelines on indigenous peoples at the multilateral level;
- Has clear targets for achievements (at the international level)
- Is integrated with other Danish policies on bilateral aid, environment and development.²⁰⁸

Weaknesses

- Does not include clear operational guidance for practical field operations and sectoral initiatives at the country level;
- Only implicit recognition of the right to free and prior informed consent;
- Does not feature explicit protection against forced relocation;
- Lacks adequate treatment of national and local level processes;
- Not supported by clear institutional mechanisms to implement the policy;
- No formal accountability mechanisms.

²⁰⁸ The Danish 2000 Development policy aims to support national governance systems that help respect the rights of indigenous peoples. See Danida (2000) *Denmark's Development Policy: partnership 2000* Ministry of Foreign Affairs, Copenhagen at 4th bullet, page 34.

BOX 13: Danish Agency for International Development (Danida)

Title of policy: *Strategy for Danish Support to Indigenous Peoples* (July 1994)

Standards source: Draft UN Declaration on the Rights of Indigenous Peoples and other international instruments on the rights of indigenous peoples plus Danish legislation and policies;

Approach: Self-determination; rights; participation; capacity-building; partnership and ethical trade.

Some key provisions

International standards on human rights and development:

Denmark will:

- > strengthen “the rights of indigenous peoples through political dialogue based on international declarations and agreements...” [section 6, page 10].
- > “...endeavour to make the UN complete and adopt the UN Draft Declaration on the rights of indigenous peoples as soon as possible as proposed by the Working Group for Indigenous Peoples...”[Section 6a, page 12]
- > promote the establishment of a permanent UN Forum for Indigenous Peoples;
- > “...continue to offer financial support towards enabling indigenous peoples to take part in international work”
- > expect governments in “...cooperation countries not to be involved in violations of the rights of indigenous peoples and for authorities to take effective measures to bring violations by third parties to a halt”
- > wherever relevant, “...consistently raise the question of the conditions and rights of indigenous peoples in the annual negotiations with programme countries...” [section 6b, page 14]
- > “...work to ensure...that the European Union prepares independent guidelines for the integration of measures to assist these (indigenous) peoples” [section 6c, page 15]

Land and resource rights:

- > “Top priority will be given to projects that support self-organization, recognition of rights to land and resources, and work to obtain self-determination.” [section 6d, 2nd bullet, page 16]
- > “Environmental protection and re-establishment are also important areas, where local residents are assured the right to further sustainable utilisation of natural resources” [section 6d, 4th bullet, page 16]

Self-development, education and capacity building:

- > “...The objective of Danish aid to indigenous peoples is to contribute towards creating realistic possibilities of development on their own terms and based on their own culture and feeling of belonging – especially to a given territory” [section 5, page 10]
- > “High priority will also be given to educational and training activities e.g....building up of bilingual competence and other relevant skills” [section 6d, 2nd bullet, page 16]

Intellectual property

- > “...Denmark will continue to work to reach agreement on the protection of the intellectual rights of indigenous peoples” [section 6e, page 18]

Ethical trade

- > Denmark will support the preservation and development of sustainable methods of gathering, catching, hunting and animal husbandry... (and will) ... support free trade in products resulting from these operations...”
- > Denmark will work to ensure that “...products made by indigenous peoples are assured fair marketing (and)...that certain products made by indigenous peoples obtain preferential status when traded with EU countries.” [section 6e]

Guidance or instructions to Danish government agencies:

- > “...both the aid administered by the Ministry of Foreign Affairs and the Ministry of the Environment will cater for the indigenous peoples aspect by including it in the regional strategies to be drawn up.” [section 6d]
- > “...future guidelines for aid to individual projects will state that priority will be given to such projects as those involving indigenous peoples” [section 6d]

Type of standards: Broad policy and political statement of principles, priorities and strategy for Danish overseas aid and foreign policy in support of indigenous peoples. The Strategy was endorsed by the Danish Parliament and is therefore understood to be binding on all Danish government agencies.

Accountability mechanism: No information.

Implementation review: A review was carried out by a team of indigenous experts in 2001.

Danish development policies and activities affecting indigenous peoples:

Danish development aid is focused on a limited number of “programme countries”. These are Tanzania, Uganda, Mozambique, Ghana, Benin, Burkina Faso, Zambia, Kenya, Nepal, Bangladesh, Bhutan, Vietnam, Nicaragua and Bolivia – though Danida projects are undertaken in other countries.²⁰⁹ In line with its 1994 Strategy, Denmark provides bilateral assistance to several projects that aim to promote the rights of indigenous peoples. In several countries in Asia and Latin America, Danida has supported projects that aim to help indigenous communities secure their land tenure and exercise their rights to live on their ancestral lands.²¹⁰ Support has also been extended to indigenous training centres such as the Belize Indigenous training Institute and the international Training Centre of Indigenous Peoples (ITCIP) in Greenland that provides a number of courses for indigenous trainees, including a course on “Indigenous Rights in the International System”. Danida has also provided assistance to indigenous NGOs and to support NGOs like the International Work Group for Indigenous Affairs (IWGIA).²¹¹

Since adopting its Strategy towards indigenous peoples in 1994, Danida has maintained its overarching aid framework that aims to reduce poverty and promote respect for democracy and human rights in developing countries. In the run up to the World Summit on Sustainable Development, the Danish government reaffirmed that it would not supply bilateral assistance to governments whose authorities violate human rights:

“The Government will pursue an assistance policy with a higher degree of consistency. Systematic, constant violation of human rights and democratic rules will no longer be tolerated”²¹²

The primacy of respect for human rights is also reflected in Danish support for conservation and natural resource management projects through Danaid:

“The Government also expects recipients of Danish environmental assistance to live up to the internationally recognised principles concerning respect for human rights. Extending environmental assistance as an isolated sector activity without consideration for political conditions in the country in question must cease.”

Implementation review:

Danida commissioned four indigenous professionals from Ecuador, Kenya, Bangladesh and Greenland to undertake a review of implementation of the *Danish Strategy for Support to Indigenous Peoples* in 2001. The reviewers congratulate the Danish government for its proactive and progressive policy statement in support of the rights of indigenous peoples. The team found that the implementation of the international components of the strategy had been particularly successful.

²⁰⁹ <http://www.um.dk/english/dp/ba.asp>

²¹⁰ Some of these projects have been innovative, fully participatory and achieved land title for consolidated indigenous territories – as in a Danida-assisted land titling project in the Ucayali region of Peru – see García, P, Hvalkof, S and Gray A (1998) *Liberación y derechos territoriales en Ucayali - Perú* IWGIA Document No.24, Copenhagen. In other cases, Danida-sponsored land policy programmes have been less successful and have required substantial corrective modification due to problems in full indigenous participation in the design and detailed stages of project implementation (cf. Griffiths 1999).

²¹¹ <http://www.um.dk/udenrigspolitik/fn/summit1999-rev/1.c.2.asp>

²¹² Ibid.

In this context, the review highlights Denmark's key diplomatic role in helping to persuade the EU to adopt a policy on indigenous peoples and development co-operation in 1998, and its efforts that ensured that the UN finally agreed to establish a Permanent Forum on Indigenous Issues with indigenous members as well as governmental members in 2000.²¹³ The review team finds that the Strategy has been relatively well implemented in Latin America, but only weakly applied in Africa and Asia. A further criticism is made of the scale of reliance of funding support through NGOs who received and administered 90% of the aid directed towards indigenous development and rights issues. Overall, however, the review was positive and urged the Danish government to renew its commitment to indigenous peoples' development through the adoption of a revised and updated strategy on indigenous peoples. The reviewers make a number of proposals for revisions to an updated Danish policy:

- ❑ Adopt an explicit rights-based approach in Danish overseas aid operations;
- ❑ Call on NGOs working with Danida to also apply a rights-based approach;
- ❑ Prioritise the *implementation* of agreed standards on the rights of indigenous peoples under ILO 169 and under other international human rights instruments ratified by programme countries, such as the Convention on the Rights of the Child, CERD, CEDAW, among others;
- ❑ Use the Draft UN Declaration on the Rights of Indigenous Peoples as the source of standards on indigenous peoples' rights;
- ❑ Insist on dialogue on the rights of indigenous peoples with recipient country governments;
- ❑ Be prepared to withhold bilateral aid where indigenous peoples' human rights are being violated;
- ❑ Use positive dialogue on indigenous peoples' rights in sectoral aid;
- ❑ Maintain a focus on securing land tenure rights and resource rights;
- ❑ Ensure more support for indigenous participation in *national* policy-making and standard-setting processes;
- ❑ Emphasise capacity-building and effective participation in the development process;
- ❑ Allocate increased resources to institutional strengthening for indigenous peoples' organisations;
- ❑ Establish mechanism at the country and field levels for consultation with indigenous peoples' organisations in programme countries;
- ❑ Include benchmarks on indigenous peoples issues in sectoral programmes grounded in performance-based indicators agreed with indigenous peoples;
- ❑ Involve indigenous peoples in the "permanent monitoring" and evaluation of Danish aid operations and the implementation of the revised Strategy;
- ❑ Increase direct co-operation and partnerships between Danida and IPOs;
- ❑ Urgently develop and adopt practical *operational guidelines* to address issues relating to indigenous peoples and development;
- ❑ Support indigenous women through financing their national, regional and international networks;
- ❑ Support indigenous peoples' participation in trade-related fora such as the WTO;
- ❑ Increase the knowledge and capacity of Danida and Danish embassy staff on indigenous issues and how to implement the Strategy. Improve integration of indigenous concerns and priorities in the policies and activities of Danida.²¹⁴

²¹³ Vitery, A, Kipuri N, Roy, D and Petersen T S (2001) *Condensed Review Report: Strategy for Danish support to Indigenous peoples* December 2001

²¹⁴ Ibid.

The Danish government has responded in a positive manner to the findings and recommendations of the review by promising to focus more on implementation of standards and principles, though there is so far no clear commitment to develop a new revised strategy.²¹⁵ During its presidency of the EU in the second half of 2002, the Danish government has facilitated further EU commitments towards the improved implementation of the 1998 EU policy on indigenous peoples (section 2.1). Together with the UNDP and Norwegian and Finnish aid agencies, Danida launched a partnership initiative on *Indigenous Rights and Sustainable Development* at the side events of WSSD in August 2002. This programme has as one of its major goals, improved knowledge-sharing between donor agencies and indigenous peoples.²¹⁶

3.2 Dutch Foreign Ministry and Directorate General for Development Co-operation (DGIS)

The Netherlands was one of the first donor countries to adopt an aid policy based on respect for human rights in the 1980s. In support of the UN Decade of Indigenous Peoples, the government adopted a public policy on development aid and indigenous peoples in 1993. The policy formulation was mainly based on technical consultations with experts and academics, with little or no input from indigenous peoples and human rights NGOs.²¹⁷ As a consequence, the lengthy and complicated policy document is largely composed of theoretical discussion. Nevertheless, it also contains a number of clear principles which are supposed to underpin Dutch bilateral aid affecting indigenous peoples (Box 14).

Strengths

- Adopts a rights-based approach
- Accepts that development policies and activities should feature special safeguards to protect indigenous peoples' special attachment to their traditional lands;
- Advocates appeals mechanisms for indigenous peoples to seek redress for the harmful effects of development;
- Promotes respect for guidelines and standards on indigenous peoples in the multi-lateral development system;
- Recognises the need for detailed baseline knowledge in the design of projects and programmes affecting indigenous peoples;
- Emphasises the importance of cultural rights.

Weaknesses

- Uses vague and general language with little clear practical guidance on appropriate standards, benchmarks and procedures for development operations;
- Only implicit recognition of the right to free and prior informed consent;
- Ambiguous and weak position on the collective rights of indigenous peoples;
- Not backed up by institutional mechanisms to implement the policy;
- Not linked to formal accountability mechanisms at the country and field level;

²¹⁵ Ornemark, A (2002) *Closing address by the incoming Danish Presidency* given to participants at the workshop *Speaking Out*, 20 June 2002, Brussels –

²¹⁶ UNDP (2002).

²¹⁷ *Report of the Advisory Committee on Human Rights and Foreign Policy*; National Advisory Council for Development Co-operation - NAR (1993) *Recommendations on Indigenous Peoples*, 26 January 1993.

BOX 14: Netherlands Directorate General for Development Co-operation (DGIS)

Title of policy: *Indigenous Peoples in the Netherlands Foreign Policy and Development Cooperation* (May 1993)

Available at: <http://www.nativenet.uthscsa.edu/archive/nl/9307/0074.html>

Languages: English, Dutch

Standards source: Not explicit. Some references to Agenda 21 and indigenous peoples declarations;

Approach: human rights; rights-based development; territorial and land rights; cultural rights.

Some key provisions

Policy scope and coverage:

- > Draws on the problematic Martinez Cobo definition of indigenous peoples, but does recognise that self-identification is an “important feature” [section II]

International standards on human rights, environment and development:

- > “...The Government considers legal protection or the protection of human rights as one of the most important priorities in its policy on indigenous peoples, together with reinforcing the identity of these peoples and increasing their participation and representation within national and international frameworks. In safeguarding human rights the Government sees the elimination of all forms of discrimination against members of indigenous peoples as its main objective...” [section III]
- > “The Netherlands will continue to focus on improving the effectiveness of UN treaty mechanisms, both within the framework of the World Conference on Human Rights and in other contexts. Efforts will be made to ensure that existing committees use optimal methods to monitor compliance with the conventions...” [section III]

Policy dialogue with recipient countries

- > “...The Government is prepared to encourage and support improvements in national judicial procedures in its cooperation with countries in which indigenous peoples live.” [section III]

Land and resource rights

- > Acknowledges concept of territory that encompasses land rights, natural resource rights and right to livelihood and cultural integrity based on observations in Chapter 26 of Agenda 21 [section I]
- > “...overriding importance must be attached to those rights which are important or essential to subsistence, continuity, sustainability and cultural identity, i.e. rights relating to land, hunting, property, etc” [section III]

Self-development:

- > “...development activities must be welcomed by the indigenous community for which they are intended, they must dovetail with the needs formulated by that community, they must be compatible in substance and structure with the community culture” [section VI]

Participation and accountability:

- > “...the community or its representatives must be allowed to participate in the decision-making on activities and their implementation and evaluation [section VI]
- > “...a proper balance should be struck between the conflicting interests, and the indigenous peoples should have the right of appeal...” [section VI]

Type of standards: A political statement of general principles for overseas aid together with observations. The lack of specific operational rules or procedures suggests the policy is not binding on DGIS staff.

Accountability mechanism: Although the policy recognises the right to appeal, the DGIS does not have a formal accountability mechanism for its overseas aid.

Implementation review: A brief five-year review was carried out in 1998. Indigenous organisations and support NGOs are pressing the Dutch government to undertake more thorough evaluation and a fully participatory review involving indigenous peoples’ organisations and indigenous experts.

DGIS funds and activities affecting indigenous peoples:

DGIS does not have a co-ordinated programme targeting indigenous peoples. Development aid is channelled through various programmes including the Dutch Small Embassies Projects Programme and the DGIS Cultural Programme as well as through individual projects.²¹⁸ Much of the bilateral aid affecting indigenous peoples is channelled through Dutch NGOs, which are known as “co-financing organizations”. Key NGOs include Novib (Oxfam-Netherlands), Bilance, SNV, Hivos and ICCO, IUCN-Netherlands and WWF-Netherlands. Some of these NGOs manage budget lines that provide priority support to innovative projects with indigenous peoples. Since 1994, IUCN Netherlands has run a Small Grants for Biodiversity Conservation programme that has been praised by independent audits and evaluations. These assessments have found that the small-scale support for community natural resource management and mapping projects via direct funding to indigenous organisations and NGOs in Guyana, Venezuela, Malaysia and Indonesia have yielded positive results. Evaluations show that these projects have helped indigenous peoples promote respect and recognition of their rights and have enabled indigenous participation in biodiversity conservation. Given its success, the IUCN-Netherlands small-grants programme will remain active until 2005.²¹⁹

Dutch support for the rights of indigenous peoples was further affirmed in 1998 when the Netherlands government ratified ILO Convention 169. As the Netherlands has no indigenous peoples within its borders, the Convention places no legally binding obligations on the Dutch State. However, ratification does demonstrate the country’s commitment to upholding the rights of indigenous peoples and is a clear expression of solidarity with the indigenous movement and other State-parties to the Convention. Given the universal and indivisible nature of human rights, it is understood that Dutch government agencies are morally obliged to ensure their overseas aid and foreign policies are consistent with the principles enshrined in the Convention, even if there is no formal requirement to do so.²²⁰

Dutch political commitment to indigenous peoples’ rights was affirmed again in 2000 by the Dutch Ambassador for Human Rights who stated in a public meeting on Economic, Social and Cultural Rights that:

“...the Netherlands government attaches great importance to the right to development. A human right that shares the characteristics of all human rights, civil and political as well as social, economic and cultural...Particular emphasis is needed with regard to disadvantaged groups in society, such as women, children, minorities and indigenous people...”²²¹

²¹⁸ Trio, W (1995) – at page 9. In the mid-1990s DGIS did establish a focal point and “contact group” on development, environment, human rights and indigenous peoples. However, this review has learned that the DGIS desk and contact group on indigenous peoples no longer functions. For list of DGIS-assisted agricultural projects affecting indigenous peoples, see <http://www.google.com/custom?hl=en&lr=&ie=ISO-8859-1&cof=L%3Ahttp%3A%2F%2Fwww.wisard.org%2Flogo.gif%3BLH%3A30%3BLW%3A80%3BBGC%3A%23E2F2AC%3BT%3Ablack%3BLC%3Ablue%3BVLC%3Ared%3BAH%3Acenter%3BS%3Ahttp%3A%2F%2Fwww.wisard.org%3B&domains=wisard.org&q=DGIS+Indigenous+peoples&siteearch=wisard.org>

²¹⁹ Colchester, M (2000) *Indigenous peoples and Biodiversity Conservation: global overviews and South and South East Asia review*, consultant’s report for the Biodiversity Support Programme http://www.bsonline.org/bsp/publications/asia/marcus/marcus_A.html Box at page 22.

²²⁰ NAR (1993) Kuppe (1994) at pages 102-102.

²²¹ www.minbuza.nl/english

Implementation review of Dutch policy on indigenous peoples:

In 1998, DGIS commissioned a mid-term evaluation review of its activities related to indigenous peoples. At the time, Dutch NGOs such as the Netherlands Centre for Indigenous Peoples (NCIV) criticised the review for its brevity and superficial treatment of important issues and for failing to properly involve indigenous peoples themselves in the review team. NGOs are now pressing the Dutch government to act on its public statements by updating and expanding its overseas development policy framework as it relates to agreed commitments on human rights and specific standards relating to indigenous peoples, such as those set out in ILO Convention 169.

In the first instance, NGOs are calling on the government to undertake a thorough and complete 10-year implementation review in 2003 with a team of indigenous professionals and experts (as done by Danida in 2001, see section 3.1). Specifically, the Dutch government is being asked to revise and strengthen its policy on indigenous peoples taking into account the review's findings and recommendations. At the same time, Dutch civil society is urging their government to ensure that support for the rights of indigenous peoples in international development is demonstrated in their practical decision-making in the governing bodies of multi-lateral development agencies such as the World Bank.²²²

3.3 Spanish Agency for International Co-operation (AECI)

Spain has been a donor country which has provided targeted aid towards indigenous peoples in Latin America for several years and was a key governmental advocate for the establishment of the *Fondo Indígena* in 1994 (section 2.8). In 1996, the *Agencia Española de Cooperación Internacional (AECI)* established its own Indigenous Peoples Programme targeting indigenous communities in South and Central America. AECI soon after adopted a public strategy in 1997, which set out the principles and goals of its overseas bilateral aid in support of indigenous peoples in Latin America (Box 15). Like other bilateral aid policies or strategies drawn up by European foreign ministries and aid agencies in the 1990s, the AECI document expresses broad goals and priorities for development aid, but provides only a few clear guidelines for addressing indigenous peoples' concerns in particular programmes or development operations. Also, like the Dutch policy, the Spanish regional strategy does not contain binding provisions and is therefore only intended to provide a good-practice guide for planning and decision-making.

Strengths of 1997 Strategy

- Advocates the participation of indigenous peoples at all levels of the development process: local, national, regional, international;
- *Requires* participatory baseline studies and impact assessments with affected indigenous communities;
- Supports indigenous participation in project and programme governance;
- Makes explicit reference to international standards under the CBD;
- Promotes inclusion and empowerment of indigenous women;
- Aims to safeguard the rights and interests of indigenous children;
- Supports regional programmes targeting indigenous peoples;

²²² Netherlands Centre for Indigenous Peoples – NCIV (2002) “Kritiek op Wereldbank barst los” *Indigo Juli/Augustus 2002*

Weaknesses of 1997 Strategy

- Mainly based on general principles with only a few clear-cut requirements or rules to be followed by AECI staff, partners and aid-recipients;
- Does not have any provisions on territorial and land rights;
- Adopts a narrow concept of property rights confined to intellectual and cultural property;
- Makes no reference to ILO Convention 169;
- Does not explicitly respect the right to free prior and informed consent;
- Does not prohibit involuntary resettlement;

AECI policies, programmes and activities affecting indigenous peoples

Although AECI channels some overseas aid to Asian and Africa countries²²³, it does not have a dedicated policy or targeted programme for indigenous people in those regions. There is also no available portfolio breakdown readily available on the internet to identify clearly what sorts of projects it funds in Africa and Asia. In Latin America, AECI has Technical Co-operation Offices (OTCs) linked to Spanish embassies in each country. These offices are responsible for implementing projects under bilateral agreements.²²⁴ Most, but not all, of the web sites for these OTC offices feature lists of active projects and programmes which confirm that AECI supports a few projects targeting indigenous peoples, though most assistance is directed towards generic national-level projects for social and economic development.²²⁵ In practice, according to the AECI web site, the AECI Indigenous Peoples Programme has a modest budget and currently operates just three active projects in Panama (1) and Peru (2).²²⁶ Nonetheless, Spain remains a major donor to the Indigenous Peoples Fund and is pushing for reforms to make the Fund more effective.²²⁷

Implementation review and development of a revised strategy

AECI decided to review, update and *strengthen* its Strategy towards indigenous peoples in 2000. The agency has since embarked on a highly participatory process of revising its bilateral aid policy towards indigenous peoples. The revision has involved widespread consultation with NGOs working with indigenous peoples and indigenous peoples' organisations. The first draft was reviewed by 21 indigenous organisations in the AECI-sponsored training centre in Cartagena, Colombia in June 2001. Indigenous organisations present at that meeting made multiple recommendations to AECI on fundamental elements that should be included in a revised policy. In general, indigenous representatives urged the Spanish aid agency to adopt a more rights-based focus to its policy towards indigenous peoples.²²⁸

²²³ See <http://www.aeci.es/9-Proyectos/icma/00/08-distribucion.htm> for a breakdown of annual Spanish aid flows by country and region.

²²⁴ http://www.aeci.es/9-Proyectos/indigena/acceso_financiacion.htm For details of AECI regional offices, see <http://www.aeci.int.bo/> ; <http://www.netsalud.sa.cr/aeci/> ; <http://www.aecicuador.org/> ; <http://www.aeci.org.mx/> ; <http://www.aeci.org.pa/> ; <http://www.aeci.org.pe/> ;

²²⁵ See, for example, the active portfolio list for AECI in Peru under "Indice de proyectos" <http://www.aeci.org.pe/aeci-pe.htm>

²²⁶ http://www.aeci.es/9-Proyectos/indigena/proyectos_actividades.htm The Indigenous Peoples Programme budget stood at approximately \$6.4 million dollars in 2000, of which 1.85 million dollars was allocated to projects and programmes (of which \$224,000 went directly to field projects) – see <http://www.aeci.es/9-Proyectos/indigena/estadisticas.htm> and http://www.aeci.es/9-proyectos/indigena/programa_indigena.htm

²²⁷ <http://www.aeci.es/9-proyectos/indigena/indigena-conclusiones.htm>

²²⁸ *Pronunciamento de la organizaciones indigenas de latinoamerica – participantes en la reunión de trabajo de discusión de la Estrategia de la Cooperacion Española* Cartagena de Indias, Colombia, 26-29 de junio de 2001.

BOX 15: Agencia española de cooperación internacional (AECI)

Title of policy: *Estrategia española de cooperación con los pueblos indígenas iberoamericanos* (1997)

Available at: <http://www.aeci.es/9-proyectos/indigena/estrategia3.htm>

Languages: Spanish

Standards source: CBD, UNFCCC, Convention on Desertification

Approach: culture and development; participation; gender; capacity-building; fair trade.

International standards:

- > “Promover la implementación de los artículos concernientes a los Pueblos Indígenas de los siguientes Convenios Internacionales: Convenio de Biodiversidad (art. 8j), Convenio sobre el Cambio Climático, Convenio sobre la Desertificación” [sección 2, *Principales puntos de la Estrategia*, punto 11]
- > “Promover la inclusión de los Pueblos Indígenas en las políticas y programas de la UE y sus estados miembros”[sección 2, *Principales puntos de la Estrategia*, punto 2]

Baseline studies, impact assessments and safeguard measures:

- > “En todos los proyectos tendrá que ...tenerse en cuenta también en los estudios de impacto ambiental, que requerirán toda esta índole de proyectos” [sección 2, *Principales puntos de la Estrategia*]
- > En colaboración con las propias organizaciones indígenas representativas se tenderá a realizar estudios especiales de determinación de líneas programáticas de actuación conjunta, así como análisis de los impactos económicos, sociales, culturales y ecológicos del respectivo proyecto [sección 2]
- > “Protección y salvaguardia de la infancia indígena” [sección 2, *Principales puntos de la Estrategia*, punto 8]

Self-development and capacity building:

- > “En todos los proyectos tendrá que analizarse hasta qué grado el mejoramiento propuesto de las condiciones de vida es compatible con las ideas de desarrollo y la forma de vida de la población afectada” [sección 2, *Principales puntos de la Estrategia*]
- > “En la selección, planificación y ejecución de los proyectos será una premisa fundamental que participen en los mismos las propias comunidades indígenas, priorizando aquellos que provengan directamente de la petición de estas comunidades” [sección 2, *Principales puntos de la Estrategia*]
- > “Cuando se asignen fondos financieros en un volumen importante será necesario cuidar de no exceder las capacidades de absorción financiera de las comunidades indígenas destinatarias de la ayuda, ni sus posibilidades de administrar fondos” [sección 2, *Principales puntos de la Estrategia*]
- > “...deberá recurrirse en la medida de lo posible a las propias comunidades indígenas destinatarias y tender al fortalecimiento o a la creación de entidades ejecutoras locales, tratando de integrar las experiencias adquiridas por la cooperación no gubernamental” [sección 2, *Principales puntos de la Estrategia*]
- > Fomentar proyectos dirigidos al fortalecimiento de las organizaciones indígenas, así como a su capacitación y participación en los órganos parlamentarios y gubernamentales [2: punto 6].

Participation:

- > promover “participación indígena en foros nacionales e internacionales de toda índole, su integración en las políticas de desarrollo de sus propios países, así como en los procesos de formulación de sus propias estrategias y proyectos de desarrollo” [sección 2, quinto párrafo]
- > “Promover la inclusión de los Pueblos Indígenas en las políticas de sus propios Estados nacionales” [2: punto 1]
- > Promover la participación activa de los Pueblos Indígenas en la identificación, formulación y ejecución de todo proyecto de desarrollo a ellos dirigido, tanto en el plano bilateral, como en el multilateral [2: punto 3]
- > “Prestar especial atención al fortalecimiento del papel participativo en la sociedad de la mujer indígena, así como mantener el de los ancianos en las estructuras tradicionales.” [2: punto 7]

Intellectual Property:

- > “Promover el respeto y salvaguardia de los derechos de Propiedad Intelectual y Cultural de los Pueblos Indígenas” [sección 2, *Principales puntos de la Estrategia*, punto 12]

Fair trade:

- > “Promover el desarrollo de circuitos de comercialización de los productos originarios de las comunidades indígenas a través del "Comercio Justo".

Type of standards: General principles for overseas aid, with some clear bench marks and safeguards to be followed in AECI-assisted operations. However, provisions are only non-binding good practice guidelines.

Accountability mechanism: No formal mechanism. Concerns can be raised informally.

Implementation review: No information.

In June 2002, AECI issued its second revised draft of its new *Estrategia de Cooperación Española con los Pueblos Indígenas (ECEPI)* for approval by the government and its Ministry of External Affairs. The progressive draft document has incorporated many of the key recommendations made by both indigenous peoples' organisations and Spanish human rights and development NGOs. The Strategy retains its central goals of promoting capacity building and effective and equitable participation of indigenous peoples at all levels and stages of the development process, but also notably adopts a new and stronger rights-based approach grounded in self-development. In clear response to the calls of indigenous peoples the draft Spanish policy explicitly recognises that:

“.....Spanish cooperation will...respect and support development strategies that stem from indigenous communities themselves. In this way, the aim is to support the self-development of indigenous peoples which entails the practical application of their own models of resource management defined by their distinct identity...” [section 4, 2nd paragraph]

Also in response to indigenous recommendations and consistent with the 1998 EU policy on Indigenous peoples, the revised draft document affirms that in relation to the principle of free prior and informed consent, Spanish cooperation:

“...will support the full and effective participation of indigenous peoples in the formulation and implementation of development projects and programmes carried out in their territories, provided such projects have secured their free prior and informed consent” [section 6]

Attention to collective rights is also recognised as central to any effective policy on indigenous peoples. For example, under its objectives for institutional development and good governance, the AECI aims to:

“Defend... the individual and collective rights of indigenous peoples in the national arena, by supporting their dissemination, promoting their respect and by informing non-indigenous society...” [section 6, point 2]

Support for territorial defence activities is also identified as a key objective:

“It is considered necessary to respect the following orientating principals...back up indigenous peoples and their organisations in the protection of their territories, environments, cultural systems and cultural heritage through support to activities that are consistent with their defense” [global objectives, point 4]

The draft Strategy also adopts self-identification as a fundamental criterion for the identification of indigenous peoples covered by the policy and links this directly to indigenous peoples attachment to their ancestral territories:

“Spanish development co-operation considers self-identification as the basic criterion for the identification of indigenous peoples. Spanish aid policy also recognises that the identity of indigenous peoples is closely tied to their concept of territory, which constitutes the material and symbolic basis for their continued existence as a social, political and cultural entity” [section 3, 5th paragraph]

Other *strengths* in the progressive 2002 draft revised AECI policy also include its:

- Commitment to progressive political dialogue with recipient country governments on the rights of indigenous peoples;
- Support for the *implementation* of internationally agreed standards on the rights of indigenous peoples;
- Recognition of the need to develop performance based indicators for effective development with indigenous peoples' organisations and affected communities;
- Consistent recognition of the need to apply the principles and provisions of the policy to *all* AECI-assisted operations that may affect or involve indigenous peoples and their communities in a direct or indirect (partial) manner;
- Increased support for indigenous women.²²⁹

The Draft revised policy could be further improved with more explicit provisions on land and resource rights. Clear additional binding operational standards would also greatly strengthen the utility of the policy. At present the Strategy still remains a set of non-mandatory guiding principles that AECI staff and partners must "take into account". Like other donor agencies reviewed for this guide, AECI also still lacks formal mechanisms to make it accountable to affected rights holders and citizens. The Ministry of External Affairs is currently reviewing the progressive June 2002 draft document prior to a second round of public consultation.

3.4 German Federal Ministry for Economic Cooperation and Development (BMZ)

German overseas development co-operation is overseen by a central government ministry known as Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ). BMZ is responsible for developing aid policy and for allocating funds to various financial and implementing agencies. These include the Kreditanstalt für Wiederaufbau (KfW), Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), the German Development Service (DED) and the Carl Duisberg Gesellschaft (CDG). BMZ policies are issued as 'Concepts' or 'Sector Strategies' that contain principles and standards which are officially binding on all German implementing agencies and their staff.²³⁰ The mandatory nature of these BMZ policies is spelled out clearly in the recent 2002 Forest Strategy:

"Minimum ecological and social standards...are the basic requirements of BMZ concerning support and implementation of programs and projects...they are to be operationalised by...applying instruments of German development cooperation (e.g., EIA), as well as drawing on the introduction of international standards...Minimum standards shall apply to all German Cooperation....These standards are to be transparently applied and documented during studies into a project's eligibility, during project implementation and project/program monitoring, as well as assessments of the enabling environment for forest policy."²³¹

²²⁹ AECI (2002) *Proyecto de Estrategia de Cooperación Española con los Pueblos Indígenas (ECEPI)* (Draft) Documento-resumen, Junio de 2002, Agencia Española de Cooperación Internacional, Dirección General de Cooperación con Con Iberoamericana, Ministerio de Asuntos Exteriores, Madrid

²³⁰ See <http://www.bmz.de/infoteh/fachinformationen/konzepte/index.html> for a list of BMZ Concept papers. Analysis of these documents reveals that they are written in different styles. Some, such as the Concept paper on Prior Informed Consent (PIC), simply review approaches without including clear principles or operational requirements: <http://www.bmz.de/en/media/spezial/spezial033/index.html> .

²³¹ BMZ (2002) at section 3.2, 2nd and 3rd paragraphs.

In 1996 BMZ adopted a broad regional policy on *Development Co-operation with Indigenous Populations in Latin America* (Box 16). The provisions of the policy cover indigenous peoples in both upland and lowland areas as well as urban indigenous communities. BMZ plans to update this policy, but as yet no new version has been drafted and the 1996 document remains valid. The provisions of the policy:

- promote measures to recognise collective property and land tenure rights
- require measures to protect indigenous peoples from forced relocation
- recognise (indirectly) the right of free prior and informed consent
- emphasise the need to respect and consider indigenous peoples' own priorities and models of development
- advise that affected communities should be involved in the development process at the project identification stage.²³²

The policy also recognises the potential value of traditional forms of indigenous resource management in promoting sustainable development and conservation as it affirms:

“Within the framework of global efforts to foster the protection of the environment and natural resources - the German government is conscious of the great importance of the traditional knowledge of indigenous communities and the specific sustainable forms these communities have developed for the management of fragile ecosystems” [section 3.0, 1st para]

Prior to the adoption of its regional policy for Latin America, BMZ had already issued a policy on indigenous peoples in relation to its programme on tropical forests in 1994 titled *Support for Forest Peoples in the framework of the Rainforest Programme*. This policy was updated in 1997 with a new policy on *Promotion of Indigenous Forest-dwelling Peoples within the scope of the German Federal Government's Tropical Forest Programme*. This sectoral policy contains provisions which require:

²³² BMZ (1996) *Concepto relativo a la Cooperación para el Desarrollo con Poblaciones Indígenas en América Latina* Bevölkerungsgruppen in Lateinamerika 1996, 30 Seiten (BMZ-Konzepte Nr. 73) Article ID 90215

BOX 16: German Federal Ministry for Economic Cooperation and Development (BMZ)

Title of policy: **Concept for Development Co-operation with Indigenous Populations in Latin America – BMZ - Konzepte Nr. 73** (November 1996)

Languages: Spanish and German

Available via: <http://www.bmz.de/infothek/fachinformationen/konzepte/90215.html> (to order version in German)

Standards source: ILO Convention 169; Ch. 26 of Agenda 21; Convention on Biological Diversity and also German aid and operational policies:

Approach: self-development; traditional rights; land tenure; participation capacity-building

Some key provisions

International standards on human rights and development:

The German Federal government will intensify its efforts to:

- > “support indigenous populations in the articulation, formulation and practical realisation of their legitimate rights...not only as part of its...efforts to combat poverty in Latin America, but also as important contribution to safeguard human rights and consolidate social-democratic structures...” [section 3.0, 1st para]
- > “...advocate the amplification of programmes in support of indigenous populations” in intergovernmental decision-making fora, at the multilateral level and in the European Union and “improved co-ordination in bilateral and multi-lateral approaches” [section 4.0, 5th para]

Land and resource rights and protection from forced eviction:

Support measures should focus in particular on:

- > “...the recognition of property, tenurial and usufruct rights – be they individual or collective – to land inhabited by or cultivated by indigenous communities...” [section 3.3, 4th para.]
- > “...effective protection against forced displacement, against expropriation without compensation and against any other restrictions on their vital living and economic space.” [section 3.3, 4th para.]
- > Special emphasis should be placed on these (land and resource) rights and safeguards in projects affecting tropical forests and in general rural development projects [section 3.3, 4th para.];

Self-development, education and capacity building:

- > “...measures incorporating indigenous populations seek sufficient guarantees for their traditional rights and respect in particular their right to social and cultural identity and freedom to choose their way of life” [section 3.1, 8th para.] ...“...measures that affect the interests of the indigenous population may only be undertaken with *their agreement*...” [section 3.3, final para.]
- > Projects for administrative strengthening... “should seek to strengthen local representative structures and self-help in indigenous communities” [section 3.3, 4th para.];
- > “Co-operation in legal and judicial areas will have to take into account the existing conflict resolution processes in indigenous communities and the customary law practices by them...” [section 3.3, 4th para.]
- > “In all projects an analysis will be required to assess the extent to which the proposed improvement in the living conditions is compatible with the affected indigenous population’s way of life and their own ideas of development. This aspect will have to be considered in environmental compatibility studies that are required for all projects” [section 3.3, 5th para.]
- > Health, education and natural resource management projects should/must “support” or “take into account” traditional knowledge and must be “absolutely voluntary” and should be based on respect for community’s cultural, religious and spiritual values. [section 3.3, 5th and 6th paras.]
- > “...special training measures should centre especially on the protection of human rights in the sense of imparting knowledge on existing rights and possibilities for their realisation” [section 3.3, 6th para]

Participation and baseline studies:

- > “...Early and ample participation of target groups and their legitimate representatives should be assured in the selection, planning and implementation of projects. As a general rule, there should be an aspiration to incorporate these groups during the project identification stage” [section 3.3, final para]
- > In collaboration with the target groups, special studies are elaborated, if necessary, to analyse the social, economic, cultural and ecological impacts of a particular project [section 3.3, final para]

Type of standards: Broad statement of principles and mandatory benchmarks to “aid decision making” in German overseas aid policy and projects affecting or targeting indigenous peoples in Latin America.

Accountability mechanism: No information.

Implementation review: Yes in 1999/2001. See <http://www.bmz.de/en/media/spezial/spezial067/15.html>

- Informed consultation with affected communities and their involvement in the decision-making process;
- Survey of traditional land and use rights and respect for these rights ‘to the greatest possible extent’;
- Awareness of the differing concepts of land ownership and resource control between forest dependent communities and external agencies and between different forest-dwelling peoples;
- Review of the potential impacts of a proposed project that includes consideration of rejection of proposals or the entire project where these are likely to seriously contradict the fundamental interests of forest-dwelling peoples.

In 2000 and 2001, BMZ formulated a new Sectoral Strategy on forests with the active participation of NGOs and indigenous organisations. The final policy adopted in August 2002 contains a number of clear benchmarks and rules relating to indigenous peoples and local communities. These standards incorporate some (but not all) of the main recommendations made by civil society during the public consultation process. Indeed, German human rights and environmental NGOs report that their inputs to the policy process aimed to guarantee minimum standards and benchmarks in their country’s own bilateral policy on forests and overseas development, which they hoped would be promoted by the German government in multi-lateral agencies such as the World Bank. Regrettably, the final revised World Bank policy on Forests adopted in October 2002 fails to meet the standards included in the German Forest Strategy [Box 17].²³³ It is noteworthy that in its Action Plan on Poverty Reduction to 2015, the German government affirms its support for measures to ensure affected indigenous peoples are fully involved in biodiversity conservation and sustainable development projects.²³⁴ The same Strategy expressly commits Germany to promoting the ‘elaboration, entry into force, and implementation of global standards and arrangements’ on indigenous peoples.²³⁵

Strengths of German policies relating to indigenous peoples:

- binding minimum social and ecological standards;
- provisions to respect property and ownership rights;
- international human rights instruments, intergovernmental environmental agreements and UN principles on sustainable development form the source of policy standards;
- preconditions that must be met before German development aid can be provided;
- provisions requiring accountability/appeal mechanisms (2002 Forest Strategy);
- protection against forced resettlement;
- respect for the right to self-development and the right to free prior and informed consent [1996 Latin America regional policy];
- recognition that special care must be exercised to ensure that the institutional and administrative capabilities and “financial absorption” capacity of indigenous organisations are not overwhelmed.

²³³ See, Reuter’s press release, October 31, 2002: *World Bank Approves Controversial Forest Plan*

²³⁴ BMZ (2001) *Poverty Reduction – a Global Responsibility: Programme of Action 2015. The German government’s contribution to halving extreme poverty worldwide* BMZ, Bonn at pages vi and 22. It is disappointing that parts of this BMZ policy document equate indigenous peoples with ethnic minorities (at page 2).

²³⁵ Ibid. at page 30. See also the BMZ Strategy on *Preserving Biodiversity through Nature Conservation* <http://www.bmz.de/infotehk/fachinformationen/konzepte/90333.html>

BOX 17: German Federal Ministry for Economic Cooperation and Development (BMZ)

Title of policy: *Sector Strategy on Forests and Sustainable Development* (August 2002)

Languages: German and English

Available at: http://www.bmz.de/en/media/concepts/sustainable_development_of_forests/

Standards source: Rio Statement of Forest Principles; Agenda 21 (Chapter 11), IPF/IFF Proposals for Action

Approach: certification/sustainable trade; ecological and social services; poverty reduction/IDTs; benefit-sharing; National Forest Programmes

Some key provisions

International standards on human rights and development:

- > “Many partner countries participate actively in international forest policy processes, and are committed to legally binding obligations...” [section 2.2, 10th bullet]
- > “Development Co-operation promotes the national implementation of international agreements on sustainable development...” [section 3.2, 1st bullet]
- > “BMZ does not support any measures that contradict international agreements on human rights and environmental issues” [section 3.2, 2nd bullet]

Land and traditional resource rights:

- > “...Development cooperation in the forest sector aims to support government, civil society, and private stakeholders – particularly poor and indigenous peoples in their efforts to protect forests and manage them in a sustainable manner...”...to “contribute to poverty reduction...specifically by ensuring the livelihood of the indigenous peoples who live in the forests and from its products...” [s. 3.1, 2nd para and summary, 2nd bullet]
- > “...priority issues for German development co-operation in the forest sector include... “Promoting transparent **land tenure and ownership rights**, recognizing the principles of sustainable forest management” [section 5.1.3, 2nd bullet]
- > “The traditional land tenure and use rights enjoyed by indigenous peoples are to be observed and treated with particular care, *in accordance with the principles laid out in the relevant ILO and human rights conventions*. Measures supported by BMZ must not infringe upon hereditary local tenure and use rights. These rights are to be regularly documented during land use planning efforts. Development cooperation must work towards official recognition of such rights” [emphasis added - section 3.2, 16th bullet]
- > The following minimum requirements shall apply to all types of commercial forest management ...: **assessment of land tenure and use rights, EIA, forest management planning and monitoring** [section 3.2, 23rd bullet]
- > “Forest function mapping encompasses the assessment of legal claims, the identification of priority functions...as well as a thorough stocktaking of local use rights and customary rights” [section 3.2: footnote 4]
- > “BMZ does not support development or utilization of... **high conservation value forests**...” ...which includes those forests that “satisfy the basic needs of the local/indigenous population, or are located in ecologically or culturally sensitive sites” [section 3.2, 20th bullet and footnote 3]

Participation and benefit sharing:

- > “All projects must be planned and implemented in a participatory manner...” [section 3.2, 3rd bullet]
- > “All measures that may affect traditional forest dwellers must be implemented with due participation of the concerned peoples...information about intended activities...is provided in advance of their actual implementation and in such a manner that it is accessible to the population concerned” [section 3.2, 13th bullet]
- > “Direct support measures in the forest should always be based on **forest function mapping** during the initial support phase, which must integrate representatives of all concerned parties (local population...private sector, NGOs, etc) [section 3.2, 19th bullet]
- > “Projects should consider the specific needs of the local population and ensure the **fair and equitable sharing of the benefits** accruing from forest utilization” [section 3.2, 4th bullet]
- > “Commercial utilization of the forest may only be supported if appropriate mechanisms are simultaneously developed that ensure that the local population receives a fair share of the benefits, and continue to allow them the necessary subsistence use of the forest” [section 3.2, 15th bullet]
- > “In high conservation value forests, only participatory, multi-purpose, sustainable forest management by the local population may be supported...” [section 3.2, 21st bullet]
- > “...priority issues for German development co-operation include... “Ensuring **participatory and appeal rights** with regard to all relevant measures taking place in the forest sector” [section 5.1.3, 2nd bullet]

Type of standards: Priorities for Germany’s official development co-operation in the forest sector, and a set of social and ecological ‘minimum standards’ binding upon the agencies that implement German development aid operations. It is also intended as a reference document for NGOs and the private sector.

Accountability mechanism: No information.

Weaknesses:

- variable and ambiguous treatment of critical land rights terminology within and between policies (i.e., use, customary, ownership, property, access etc.): lack of internal consistency;
- variable standards between policies [e.g., prior informed consent recognised in the 1996 regional policy, but not in the 2002 Forest Strategy]
- lengthy pre-ambular descriptive texts precede and overshadow substantive standards and operational rules;
- no explicit rights-based approach;
- executive summaries and guideline bullets exclude mention of the key social standards embedded in the detailed sections of the policy;
- few provisions specify how binding minimum policy standards are to be implemented in practice (e.g., What steps must be taken to secure land rights? When must these steps be carried out? Etc.);
- bias towards participation and benefit sharing (without clear rights-based approach);
- unclear when participatory social assessments and baseline studies are required;
- fails to note pitfalls and risks associated with certain key concepts (e.g., definitions of ‘illegal’ logging)
- accepts that resource use restrictions may be imposed on local populations so long as they are compensated [2002 Forest Strategy]
- absence of clear implementation and quality control mechanisms to apply policy standards
- lack of associated accountability and appeals procedures.

German aid projects and indigenous peoples:

Germany has been a major contributor to the trust fund supporting the multi-donor *Pilot Program for the Protection of the Brazilian Rainforests* – this project includes components to protect indigenous territories and promote the integration of indigenous peoples into decision making in the development process. A joint KfW and GTZ project for the *Demarcation of Indian lands in Amazonia* has also been supported in Brazil and GTZ has worked for a number of years with the Coordinating Body of Indigenous Organisations of the Amazon Basin (COICA) under a GTZ project on *Traditional Knowledge and Biodiversity*.

Other GTZ projects geared towards the implementation of the Convention on Biological Diversity (the ‘BIODIV Project’) have aimed to respect indigenous and local traditional knowledge and some projects have sought to address indigenous rights issues in protected area projects.²³⁶ GTZ claims, for example, that its BIODIV projects in Peru have applied fully the principle of prior informed consent in all activities involving the dissemination of traditional knowledge. GTZ has also sponsored a number of interesting studies and participatory discussions on indigenous land rights. For example, an email conference organised by GTZ in 2000 highlighted the important connections between land tenure regimes, livelihood security and the maintenance of traditional knowledge systems. The conference concluded:

²³⁶ BMZ (2000) Biodiversity Conservation in German Development Co-operation: implementing the Biodiversity Convention BMZ-GTZ, Bonn at pages 37-68. See also Schäfer (2001).

“...Within indigenous and local communities, strong links exist between the system of land tenure, resource use, and traditional knowledge. Land is inseparable from traditional knowledge, innovations and practices...cultural and biological diversity depend on respect for the integrity of indigenous cultures and on the right of indigenous and traditional peoples to retain control over their cultural institutions, territories, language and systems of knowledge”²³⁷

In 2003, BMZ/GTZ is due to commence a new regional development co-operation programme with indigenous peoples in the Amazon in co-operation with COICA that will jointly manage the programme.

Implementation review of 1996 regional policy:

BMZ evaluated the effectiveness of its 1996 regional policy in Latin America in two phases in 1999 and 2001. The latter phase involved consultations with indigenous peoples’ organisations and staff in implementing agencies. Notwithstanding the progressive standards established in the policies and development projects mentioned above, the review found that adoption of the 1996 policy had not resulted in any significant change in the pattern or volume of German development co-operation with indigenous peoples in Central and South America. Most GTZ and other aid personnel interviewed as part of the review explained that they considered the 1996 policy as a reference document only. They did not view the document as a set of mandatory rules and guidelines for designing and implementing projects and programmes.

The review also found that most practitioners considered indigenous issues as a cross-cutting theme in policy formulation and country programmes. The review generated several findings and important recommendations for future German support for indigenous peoples in Latin America:

- promote efforts to realise the human rights of indigenous peoples and resolve outstanding legal problems that undermine livelihood sustainability;
- recognise that, in addition to a cross-sectoral approach, in some countries there is a need for specific programmes and projects to target indigenous peoples;
- projects should allocate adequate time and financial resources to guarantee the effective participation of indigenous ‘target groups’ in project design, planning and implementation;
- decentralised project management should aim to recruit staff from indigenous communities;
- direct support to indigenous organisations should be based on a prior assessment of their financial and technical ‘absorption capacity’;
- any proposals for involving government bodies in implementation should first be assessed to determine the quality of government-indigenous relations and the willingness of state agencies to support indigenous development efforts;
- particular attention should be paid to the participation and needs and priorities of indigenous women in development projects.²³⁸

²³⁷ Schäfer, C (2001) German Technical Development Co-operation: measures to promote implementation of Article 8(j) of the CBD – indigenous and traditional knowledge GTZ, Bonn - at pages 5-6. See also Daes (1995) at para. 6.

²³⁸ BMZ (2001) German Development Cooperation: Summary of the Evaluation Report "Concept for Development Cooperation with Indigenous Peoples in Latin America (2nd Phase)" <http://www.bmz.de/en/media/spezial/spezial067/15.html>

Outside Latin America, internal reviews and independent studies have shown that German aid operations affecting indigenous peoples have sometimes been of poor quality and that BMZ's social and environmental policies have not always been properly applied. In Malaysia, for example, GTZ-assisted 'FOMISS' low-impact logging operation carried out in the 1990s failed to respect the needs and land rights of indigenous peoples in the project area and did not ensure their effective participation.²³⁹ The project consequently violated the 1997 BMZ policy on forest dwelling peoples. GTZ development and conservation projects affecting forest dwelling 'Pygmy' peoples in Central Africa have also been criticised for their failure to properly consult with local communities. In some cases, the lack of consideration and respect for indigenous people's rights in GTZ-sponsored projects has led to confrontation due to the curtailment of local resource rights.²⁴⁰

3.5 Other bilateral donors

Of the remaining bilateral development agencies assessed as part of this study, two agencies are in the process of formulating such a policy (CIDA and NORAD), while the seven other agencies do not possess a dedicated policy on indigenous peoples and have not announced plans to develop such a policy.

3.5.1 Canadian International Development Agency (CIDA)

The Canadian International Development Agency (CIDA) does not possess an overarching policy or general guidelines on indigenous peoples. However, in 1997 CIDA sponsored the Canadian NGO Kivu Inc to develop prototype good practice (non-mandatory) guidelines on environmental assessments and traditional knowledge, including specific guidance for indigenous peoples, the private sector and government. The 1997 guidelines are noteworthy as they advise that land ownership and aboriginal rights issues be settled *before* a project is implemented. Governments are advised to "enforce the traditional resource rights of indigenous people and "be aware of relevant international statutes and conventions."²⁴¹ However, a failure to even note the right of free prior and informed consent to development proposals that may affect indigenous territories and communities is a fundamental weakness of the guidelines that assume all differences and difficulties can be solved through dialogue, negotiated agreements and benefit sharing.²⁴²

In 2000 CIDA expanded its 1997 guidelines by jointly developing with the ILO, the World Bank and Kivu Nature Inc. a handbook on *Integrating Indigenous Knowledge in Project Planning and Implementation*. These good practice guidelines contain references to traditional resources rights and indigenous peoples' attachment to land, but still adopt a basic benefit-sharing approach that fails to incorporate indigenous peoples' "right to say no" at the outset to advances by corporations, NGOs or other development actors who seek to work with them or locate their activities on their lands.

²³⁹ Colchester (2000) at page 20.

²⁴⁰ Barume (2000) at pages 74-77 and 130. See also Mutimanwa (2003).

²⁴¹ <http://www.kivu.com/Guidelines/summary.html> + <http://www.kivu.com/Guidelines/indigenous.html> + <http://www.kivu.com/Guidelines/corporate.html> + <http://www.kivu.com/Guidelines/government.html>

²⁴² See Garzón (2003) for a general discussion of the contradictions between approaches based on benefit-sharing and those founded on the respect for the right to prior informed consent (in relation to the World Bank).

In short, the IK handbook assumes that there is prior general agreement on proceeding with a project involving indigenous peoples, government and the private sector, and that the guidelines should be used in the design and implementation of the project. Although the guide contains some useful references to traditional resource rights and the need to resolve land ownership issues, the focus of the handbook is restricted to indigenous knowledge and intellectual property rights and applying indigenous knowledge and perspectives in development planning.²⁴³

CIDA is now in the process of developing and adopting a formal policy statement on “Indigenous Knowledge and Sustainable Human Development.”²⁴⁴ There are indications that this policy will fully recognise the right of free prior and informed consent in relation to indigenous knowledge and cultural property. However, like the World Bank’s flawed draft revised policy (section 2.2), the draft CIDA policy fails to explicitly recognise this right of prior consent in relation indigenous peoples’ rights to their territories and lands. Although the draft policy affirms that CIDA will support restitution of cultural property for indigenous peoples, there is no mention of the restitution of ancestral lands and territories (Section II, page ii). Language on resource rights is weak and does not properly recognise land ownership rights. The draft CIDA policy only: “...acknowledges the traditional entitlement rights of local and indigenous peoples to use of their own ancestral lands and natural resources...” [Section VII:v].

CIDA programmes and activities affecting indigenous peoples:

Although in recent years Canada’s foreign aid has declined as a proportion of GDP, CIDA maintains an ambitious overseas aid programme spread across Central,²⁴⁵ and South America,²⁴⁶ Africa and the Middle East,²⁴⁷ Central and Eastern Europe (including the Russian Federation)²⁴⁸ and Asia and the Pacific.²⁴⁹ CIDA supports a diverse range of activities and sectors including health, judicial reform, private sector, export promotion and natural resource management. Most country programmes contain projects to promote human rights in line with Canada’s 1996 overseas aid policy on *Human Rights, Democratization and Good Governance* and its current *Sustainable Development Strategy (2001-2003)*.²⁵⁰ However, scrutiny of its project portfolios reveals that, with a few notable exceptions such as its programme in Guatemala, few CIDA activities directly target indigenous peoples. Indeed, in some cases, CIDA projects actually exclude indigenous peoples even when they press for participation.²⁵¹

²⁴³ Emery, R (2000) *Integrating indigenous knowledge in project planning and implementation* CIDA, World Bank, Kivu Nature, Hull, Washington and Nepean
<http://www.kivu.com/CIDA%20Handbook/cidahome.html>

²⁴⁴ CIDA (2002) *Draft Policy Statement and Background Paper on Indigenous Knowledge and Sustainable Human Development* CIDA Policy Branch, Human Development Division

²⁴⁵ http://www.acdi-cida.gc.ca/cida_ind.nsf/8949395286e4d3a58525641300568be1/4d0155c681a5de588525660f00644b4c?OpenDocument

²⁴⁶ http://www.acdi-cida.gc.ca/cida_ind.nsf/8949395286e4d3a58525641300568be1/29dd8a73c00cbd758525660f00644b4d?OpenDocument

²⁴⁷ http://www.acdi-cida.gc.ca/cidaweb/webcountry.nsf/africa_e.html

²⁴⁸ <http://www.acdi-cida.gc.ca/cidaweb/webcountry.nsf/vall/5EDCEC5D940C8A3485256B42007ADF77?OpenDocument>

²⁴⁹ http://www.acdi-cida.gc.ca/CIDAWEB/webcountry.nsf/asia_e.html

²⁵⁰ http://www.acdi-cida.gc.ca/cida_ind.nsf/vall/0E0C180699EE62D7852569E7006F6C47?OpenDocument

²⁵¹ Colchester, M, La Rose, J and James, K (2001) *Mining and Amerindians in Guyana* North-South Institute, Ottawa.

The lack of targeted CIDA projects is likely to change in the near future, at least in the Americas. In October 2002 CIDA launched a new *Indigenous Peoples Partnership Programme (IPPP)* which has a \$10 million dollar fund over four years to support partnerships between Canadian native peoples and indigenous peoples in South and Central America.²⁵²

3.5.2 Norwegian Development Agency (NORAD)

Although Norway ratified ILO Convention 169 in 1990, the Norwegian development agency NORAD has not yet developed a dedicated policy on indigenous peoples in relation to its overseas aid and foreign policy. Targeted work on indigenous people has been confined to the Norwegian Indigenous Peoples Programme (NPIP) that began work in 1983. NPIP has worked in only five countries in Latin America: Brazil, Peru, Chile, Paraguay and Guatemala. NPIP has mainly supported small-scale capacity building projects and institutional strengthening of indigenous peoples' organisations.²⁵³ In common with several other European bilateral development agencies, Norway's development co-operation is managed by staff in its embassies in developing countries.²⁵⁴ It is noteworthy that the Norwegian government may also take part in the Danida-UNDP planned partnership programme on *Indigenous Rights and Sustainable Development* (see section 3.1 above).

A 1998 evaluation of NPIP carried out by the North South Institute found that NPIP's projects have been reasonably useful, but that the Programme lacked coherence and was not integrated with Norway's overall aid programme. The evaluation report recommended that Norway develop and adopt an overall *policy* on indigenous peoples to inform its foreign policy and its overseas aid activities. The establishment of a national-level dialogue was also recommended.²⁵⁵ This latter proposal has been actively followed up through the Norwegian *Forum for Development Co-operation with Indigenous Peoples*, which has held three conferences overseen by the University of Tromsø between 2000 and 2002.²⁵⁶ NORAD is currently developing a policy on indigenous peoples with the Norwegian Ministry of Foreign Affairs. However, no information is available on progress in developing such a policy other than indications that NORAD had some time ago sent a draft "strategy" on indigenous peoples to the Ministry of Foreign Affairs for comment. NORAD is still awaiting a reply.

3.5.3 Swedish International Development Agency (SIDA)

The Swedish International Development Agency (SIDA) does not have a policy on development co-operation and indigenous peoples. The Saami Council has pressed the government for a number of years to adopt a comprehensive policy on indigenous peoples based on the 1998 EU and EC policy.²⁵⁷ However, no such policy has been developed.

²⁵² http://www.acdi-cida.gc.ca/cida_ind.nsf/vLUallDocByIDEn/4AA3AD2DA5490E9985256C71004AD0AF?OpenDocument

²⁵³ FAFO (1999) *The Norwegian Programme for Indigenous peoples* FAFO, Oslo

²⁵⁴ <http://www.embassies.mfa.no/cgi-bin/wbch3.exe?html=../publishing/top/index.html&p=2728>

²⁵⁵ Daudelin, J (1998) *Lessons from Norway on Foreign Aid and Indigenous Peoples - Evaluation of the Norwegian Program for Indigenous Peoples* a report submitted by the North-South Institute to the Norwegian Ministry of Foreign Affairs, Oslo, November 1998

²⁵⁶ <http://www.uit.no/ssweb/forum/indexen.htm>

²⁵⁷ See http://www.samefolklet.se/aldre_nummer/aug987e.htm

Notwithstanding the lack of a formal policy linked to overseas aid, some incidental mention of indigenous peoples is made in SIDA's policy on the CBD, which states:

“Sida shall give priority to: work to respect, maintain and develop knowledge on the conservation and sustainable use of biological diversity in local communities and indigenous populations including support for strengthened local control, by both men and women, over the use of biological resources and the fair and equitable sharing of benefits of biological resources and the use of local knowledge” [section 3, 1st bullet, page 10]

The same policy document affirms that:

“The positive and negative effects of individual projects on biological diversity and the consequences of these effects on different groups in the population shall be presented in environmental impact assessments (EIA) which shall be made for all Sida projects” [section 3, Implementation, 2nd para. Page 11]²⁵⁸

SIDA's recent policy document titled *Perspectives on Poverty* affirms Sweden's commitment to a rights-based approach to poverty reduction and its intention to abide by international human rights agreements and conventions in all its aid operations. In common with many other European bilateral aid agencies, the overall focus of SIDA's poverty alleviation strategy is 'poor people', although it is recognised that this broad social-economic category may have diverse characteristics that can produce varying levels of inequality according to age, gender, access to resources and ethnicity.²⁵⁹

Of more general importance to this review are the current indications that the Swedish government is at an advanced stage in the process of ratifying ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries. Once ratification of ILO 169 is complete, the Swedish government may voluntarily choose to apply the standards under this ILO instrument in all of SIDA's development policies and projects overseas.²⁶⁰

3.5.4 Ministry of Foreign Affairs of Finland

Finland's overseas development aid is administered by its Ministry for Foreign Affairs, which allocates policy and operational oversight to its Department for International Development Cooperation. The Finnish Department for International Development does not have a specific policy on indigenous peoples. Nonetheless, the agency does have a Human Rights Policy under which the “Rights of Indigenous Peoples” is one thematic priority. This policy statement affirms that “the rights of indigenous peoples are supported in Finland's development co-operation” through its work with and support for UN agencies, international financial institutions and its support to civil society organisations working on development and indigenous peoples.²⁶¹

²⁵⁸ Sida (2000) *Sida and the CBD* Sida, Department for Natural Resources and the Environment, Stockholm

²⁵⁹ Sida (2002) *Perspectives on Poverty* Sida, Stockholm, October 2002 at page 41.

²⁶⁰ Sida's development projects in specific countries are managed by teams based in its embassies – see <http://www.embassies.mfa.no/cgi-bin/wbch3.exe?html=../publishing/top/index.html&p=2728>

²⁶¹ <http://global.finland.fi/tietopankki/teemat.php?id=27&kieli=3>
<http://www.undp.org/missions/finland/hrpolicy.html> See also
<http://global.finland.fi/tietopankki/teemat.php?id=21&kieli=3>

Like Sweden, Finland is soon to ratify ILO Convention 169, when presumably the government may decide to ensure the standards under this convention systematically inform Finland's development co-operation policies and projects.

3.5.5 Belgium - Directorate General for International Co-operation (DGIC)

DGIC does not currently apply a specific operational policy on indigenous peoples, though the country's public statement on strategic development co-operation issued in 2000 does make mention of indigenous peoples alongside ethnic minorities and "vulnerable groups" in Latin America.²⁶² In 1994, however, the Belgian government issued a policy note as part of its contribution to the UN International Year of Indigenous Peoples. This position paper noted the commitment of the government of Belgium to the Indigenous Peoples Fund – a commitment that was fulfilled in 1996 when Belgium became a formal member of the Fund (section 2.8). The policy statement also noted key issues and safeguards to be addressed in development cooperation affecting indigenous peoples, including:

- (i) acceptance of project proposals by indigenous communities (they want the project);
- (ii) mechanisms for effective participation throughout the project cycle;
- (iii) design based on the priorities of indigenous communities themselves;
- (iv) impact assessments derived from *prior* baseline studies;
- (v) attention to land rights and close connections with the environment;
- (vi) attention to bicultural education;
- (vii) capacity building for indigenous peoples organisations²⁶³

Although Belgium makes significant contributions to the Indigenous Peoples Fund in Latin America, scrutiny of its web pages did not indicate any DGIC projects targeting indigenous communities.²⁶⁴

3.5.6 Austrian Department for Development Cooperation (DDC)

The Austrian Department for Development Cooperation (DDC) does not possess a dedicated policy on indigenous peoples. However, Austrian development aid has identified indigenous peoples as a group for targeted aid in a number of its aid programmes since the early 1990s.²⁶⁵ Between 1993 and 1996, the Austrian government supported the recognition of indigenous peoples' rights and the demarcation of the traditional lands of indigenous communities under its *National Programme for the Protection, Conservation and Rehabilitation of Rain Forests*.²⁶⁶

²⁶² Borraz (2001) at page 5

²⁶³ Trio (1995) at page 8

²⁶⁴ DGIC may well support such projects, but its development co-operation does not identify specific field operations. Instead, aid allocations are classified by theme and sector such as 'gender' and 'agriculture'. Issues relating to indigenous peoples are not included in the Belgium aid breakdown. See, for example, http://www.dgdc.be/en/partn_count/ecuador/tabel_sector.html
http://www.dgdc.be/en/partn_count/peru/tabel_sector.html
http://www.dgdc.be/en/partn_count/congo/tabel_oda.html .

²⁶⁵ Trio 1995 at page 8.

²⁶⁶ <http://www.bmaa.gv.at/eza/ezaweb.cgi?lang=en&command=detail&id=733>

This programme is now closed. The Austrian government does not have plans at present to revive this forest sector initiative with indigenous peoples, though it is committed to maintaining its support for a few very successful projects targeting indigenous peoples in the Northwest Amazon region (referred to as informal "earmarking" of key projects in its development co-operation portfolio).

The government of Austria has also formed part of the *Climate Alliance* under which European towns agree to support Amazonian indigenous communities to conserve the tropical forest environment. So far, 256 municipalities in Austria have joined the Climate Alliance and committed themselves to reducing CO₂ emissions and providing assistance to Southern partners in the Amazon region.

Overall, however, Austria's bilateral aid programme is modest as it only focuses on eight *priority countries* and ten *cooperation countries* (Costa Rica, El Salvador, Guatemala, Nicaragua, Burkina Faso, Cape Verde, Senegal, Uganda, Rwanda, Ethiopia, Tanzania, Kenya, Mozambique, Namibia, Bhutan, Nepal and Pakistan). Most Austrian aid is channelled through multilateral institutions such as the European Commission and the World Bank Group. In 1997, Austria's development aid budget accounted for 0.26% of GDP.

3.5.7 Swiss Agency for Development and Cooperation (SDC)

In common with most other European donors, poverty reduction in developing countries forms the central focus of Swiss aid policy. At the same time, Swiss development policy seeks to promote the realisation of human rights, including the rights of indigenous peoples:

“Switzerland...commits itself to improving legal systems, women's rights, and health systems which are in conformity with human rights, as well as protecting indigenous peoples...”²⁶⁷

The Swiss development cooperation does not apply a single coherent policy on indigenous peoples, but instead adopts a general approach based on field programmes that aim to promote poverty reduction, sustainable development, respect for human rights, rule of law and democracy. The broad approach was most recently summarised in 1999 by SDC and the Federal Department of Foreign Affairs in a composite document titled *Swiss action for indigenous peoples* which draws on a 1997 mandatory policy on Human Rights and Development as well as different regional strategies.²⁶⁸ The broad position of the Swiss government set out in the 1999 statement:

- supports the adoption of the Draft UN Declaration on the Rights of Indigenous Peoples;
- acknowledges indigenous peoples as a “target group” for Swiss overseas development co-operation;
- advocates direct support for the participation of indigenous peoples in international policy processes and standard-setting bodies;

²⁶⁷ <http://www.eda.admin.ch/eda/home/foreign/huright/devel.html>

²⁶⁸ SDC (1997) *Guidelines: promotion of human rights and development cooperation*

- recognises the right of indigenous peoples to “autonomy, self-administration, with their own jurisdiction, in all matters that affect their culture, particularly with regard to religion, language, and access to land and resources”,²⁶⁹
- stipulates that Swiss development aid must not include any activities that violate or undermine human rights;
- requires corrective actions for any project that causes negative impacts;
- advises that indigenous organisations should be “involved in the different stages of a project (planning, implementation, evaluation) in cases where projects have a “direct” impact on their communities”,²⁷⁰
- identifies development impact on indigenous communities as a key “indicator of evaluation” to help assess the effectiveness of Switzerland’s overall rights-based development strategy;
- advises that capacity-building projects should include a strong educational component to support indigenous peoples’ capacity to defend their rights;
- encourages support to improving the technical, legal and knowledge base of national government agencies dealing with indigenous peoples in developing countries;
- commits the SDC and the Human Rights Section of the Swiss Political Section (PDIV) to political dialogue with recipient country governments on human rights and, as appropriate, the rights of indigenous peoples;
- supports the principle of “subsidiarity” in relation to indigenous peoples whereby “specific and differentiated” solutions are developed in each project in collaboration with local communities;
- advises that SDC operations aim to formulate solutions in a participatory manner based on dialogue between communities, local priorities and social, economic, cultural and political circumstances,²⁷¹
- recognises that the maintenance of indigenous identity and cultural integrity is closely linked to traditional lands and access to natural resources;
- pledges Swiss government support for indigenous peoples’ intellectual property rights;
- advises that the Swiss government will make efforts to ensure that indigenous peoples’ concerns are addressed in multilateral agencies such as the World Bank and WTO.

SDC and other Swiss agencies have supported a range of projects in the fields of human rights, capacity-building, poverty reduction, health, sustainable livelihoods and education, some of which have included indigenous components. Examples include support for: human rights training and centres of information on human rights for indigenous communities in Mexico and Bolivia; management of watersheds by settled and nomadic tribal communities in India; indigenous health programmes in the Ecuadorian Amazon and bilingual schools in Guatemala.²⁷² Other than a recent positive evaluation for the Bolivian judicial reform and human rights project,²⁷³ this review was not able to identify any readily accessible evaluation data on the impacts of these projects and other SDC country portfolios on indigenous peoples.

²⁶⁹ SDC (1999) *at* page 12.

²⁷⁰ *Ibid.*: *at* page 18.

²⁷¹ *Ibid.*: *at* pages 19 and 24

²⁷² See SDC (1999) *op. cit.*

²⁷³ <http://www.cosude.org.bo/proyectos2001/reformas/justicia/empoder.htm>

In common with other European bilateral aid agencies, Swiss aid operations do not feature any field-level accountability or appeals mechanisms, and citizens who are adversely affected must inform staff on SDC's periodic evaluation missions about their concerns. Communication with SDC policy advisors at the end of 2002 indicated that the SDC and Federal Department of Foreign Affairs do not plan to develop a dedicated policy on indigenous peoples. SDC staff maintain that indigenous peoples should indirectly benefit from SDC's wider policies on human rights and poverty reduction and that work with indigenous peoples is expected to increase given the Swiss policy of targeting the most "marginal" and poorest communities in developing countries.

3.5.8 UK Department for International Development (DFID)

The UK government has for a number of years been reluctant to adopt a public specific development policy on indigenous peoples. DFID policies address the needs of poor people in general, and 'vulnerable' and 'marginal' social groups in particular. In 1995, the predecessor of the current Department for International Development (DFID), known as the Overseas Development Administration (ODA), compiled internal good practice guidelines for staff and field managers on *Ethnicity, Ethnic Minorities and Indigenous Peoples*.

These guidelines are out of step with international policies and instruments as they combine ethnic minorities and indigenous peoples in a single policy and focus on individual human rights rather than collective rights. Despite these serious and controversial shortcomings, the guidelines recognise the value of detailed baseline studies prior to implementation. The guide also contains useful operational checklists for social and environmental screening to deal with key concerns associated with land and resource rights, resettlement and indigenous knowledge.²⁷⁴

More recently, DFID has produced guidelines on social analysis, which includes a section on indigenous peoples. This guidance document directs policy advisors to some relevant literature and advises DFID staff dealing with indigenous peoples issues to draw on the 1995 ODA guidelines as well as the EU 1998 Working Document on Indigenous Peoples. Mention is also made of relevant UN declarations and principles developed in 1992 at the Rio Earth Summit.²⁷⁵ Other *indirect* guidance of potential significance to indigenous peoples is contained in published DFID policy briefings, memos and discussion papers on general topics such as land tenure and sustainable livelihoods. Unfortunately, treatment of collective land and resource rights is deficient in these guidelines. It is noteworthy, however, that a recent DFID discussion document on land policy and poverty reduction advises that:

"Institutions need to adapt to recognise customary land rights; to understand indigenous land management systems; and to respect the rights of women and marginal groups. This requires institutional reform and capacity building, improvements in transparency and accountability and representation of poor people in decision-making processes"²⁷⁶

²⁷⁴ ODA (1995) *Guidance on Ethnicity, Ethnic Minorities and Indigenous Peoples* Commissioned from the Centre for Development Studies, Swansea by the Social Development Division of the ODA, London. It is noteworthy that these guidelines advise that UK aid to specific countries should be informed by a national-level analysis of the ethnic aspects of population and poverty.

²⁷⁵ DFID 1999a at page 16.

²⁷⁶ DFID (2002d) at page 14. Despite some constructive advice on customary rights, the document contains ambiguous and superficial observations relating to collective resource rights. In some parts

DFID's recent policy statement on *Realising Human Rights for Poor People* notes the importance of international instruments that relate to the human rights of indigenous peoples and acknowledges that:

“Human rights that are of particular concern to indigenous and minority peoples include rights to land, cultural integrity, participation in decision making, health and a healthy environment.”²⁷⁷

More generally, DFID's official rights-based approach to development recognises that effective social development strategies must:

- enable people to exercise their right to participate in decision-making processes which may affect them;
- combat policies, laws and institutions that perpetuate inequality, discrimination and social exclusion;
- understand “poverty” in a holistic way that encompasses important non-income dimensions, such as people's rights to livelihood resources;
- strengthen institutions and policies that increase the accountability of government to citizens and promote the realisation of human rights;
- include a participatory rights assessment to analyse why citizens are unable to claim and exercise their rights.

DFID combines its rights-based approach with a ‘Sustainable Livelihood Approach’ (SLA), which is also supposed to inform the design of its poverty reduction projects. The SLA approach is based on several important and complementary principles which establish that sustainable livelihood policies should:

- be people-centred;
- empower people to participate in decision-making processes;
- be formulated with a cross-sectoral understanding of people's multi-faceted livelihoods;
- recognise the dependence of poor people on common-property regimes which enable and regulate access to livelihood resources (forests, fisheries etc.);
- build on local strengths;
- link micro-level livelihood situations with meso- and macro-level institutions.²⁷⁸

There is a growing realisation inside DFID that rights-based and livelihood approaches can complement each other. DFID emphasises, however, that principles contained in its public policy documents such as the one cited above are not binding on its staff and have no operational status. Instead, they are meant to publicise DFID's overall approach to development and, as such, are aspirational strategic documents that shape overall priorities for UK official overseas development assistance. At the same time, the rights-based and sustainable livelihood guidelines are supposed to inform staff decisions and practice in project design and implementation.

communal land rights are judged to “exclude vulnerable users, frequently the very poor” and to only feature weak regulation for appropriate resource use, while other sections of the document recognise that community rights to natural resources are central to sustainable livelihoods – compare comments at page 4, paragraph 9 and page 11, paragraph 22 with Box 12 at page 15.

²⁷⁷ DFID (2000a) *Realising Human Rights for Poor People* DFID, London at Box 7, page 14

²⁷⁸ DFID (2000b) *Sustainable Livelihood Guidance Sheet* www.livelihoods_connect@ids.ac.uk

At the end of 2002, DFID has started work to produce an updated internal guidance note for staff on “indigenous people, poverty and the environment” in order to apply a more consistent approach to indigenous peoples across its development activities. The Foreign and Commonwealth Office (FCO) will also be involved in drawing up the internal guidelines. At the same time, DFID’s Environment Policy Department (EPD) is also funding the compilation of a briefing paper on “Indigenous Knowledge and Best Practice”.

Country Strategy Papers

Some of DFID’s *Country Strategy Papers* (CSPs) make reference to indigenous development issues. The recent 2002 CSP for Bolivia states, for example, that UK assistance will, among other goals, aim to support indigenous rights.²⁷⁹ The Indonesia CSP acknowledges the rise of “traditional *adat*” movement and notes that DFID supports “indigenous NGOs” in its forest programme.²⁸⁰ In DFID’s regional strategy for Central America, development aid has as one of its objectives UK support to improved participation of “women and indigenous people in the development process.”²⁸¹ In other CSP papers, however, indigenous issues do not feature in DFID’s analysis – even where countries have a significant indigenous population. For example, the Bangladesh CSP makes no reference to indigenous communities and these are not discussed in the evaluation of DFID aid to Bangladesh.²⁸² A more recent example of the deficient treatment of indigenous poverty issues is found in the current Draft DFID CSP for Peru, which makes almost no mention at all of the more than 10 million indigenous people (c. 47% of the national population) and their current country-wide mobilisation to press for improved recognition of their human rights and policy and legal reform measures to safeguard their livelihood security.²⁸³

DFID projects affecting indigenous peoples:

Although DFID has no dedicated formal policy on indigenous peoples, significant parts of its aid programme affects indigenous communities in developing countries. In India, DFID currently supports large-scale rural livelihood projects in Madhya Pradesh, Andhra Pradesh and Western Orissa and also co-finances the World Bank’s Madhya Pradesh District Poverty Initiatives Project, which includes a targeted tribal development component.

In Orissa, DFID is funding its own *Tribal Empowerment and Livelihood Programme*.²⁸⁴ In Brazil, the UK is supporting alternative livelihood and agroforestry initiatives in indigenous communities under the *Pilot Programme for the Conservation of the Brazilian Rainforests (PPG7)*. In recent years, assistance has also been directed towards indigenous natural resource management in Bolivia, capacity building for indigenous organisations in Colombia and indigenous self-development in Costa Rica. In most cases these projects have been implemented by UK NGOs including Oxfam and CARE International-UK. In Bolivia has also actively supported indigenous ethical research methods for the collection of traditional knowledge for use in intercultural education teaching materials. The indigenous communities and organisations involved in this novel project have praised DFID’s support for local indigenous priorities.

²⁷⁹ See, for example (DFID 2002a at page 11, section D.14, 2nd bullet)

²⁸⁰ DFID (2000b) sections C3 and D5 at pages 5-6

²⁸¹ DFID (1999c): section B10 at page 3.

²⁸² DFID (1998) and (2002d).

²⁸³ DFID (2002c). On indigenous movements in Peru, see, for example, Servindi (2002).

²⁸⁴ See DFID India portfolio via: <http://www.dfid.gov.uk/DFIDAroundWorld/aida.htm>

DFID's progressive *Multistakeholder Forestry Project* in Indonesia directly supports the national indigenous peoples organisation AMAN. The project involves capacity-building elements, the promotion of dialogue with the national government and practical policy work, which has included a fully participatory review of the implementation of social principles that address indigenous rights in commercial forestry operations under the Forest Stewardship Council's (FSC) certification standards.²⁸⁵ Other general current initiatives include DFID's *Civil Society Challenge Fund* which provides funds for NGOs also indirectly supports development work with indigenous beneficiaries. One example is the capacity-building work with Bagyéli communities in SW Cameroon being implemented by the Forest Peoples Project.²⁸⁶

Any systematic evaluation of DFID's aid operations affecting indigenous peoples is beyond the scope of this review. However, it is noteworthy that there is evidence that DFID's poverty reduction and natural resource projects have not always given adequate attention to indigenous issues. In Guyana, for example, the DFID-funded 1995-2001 *Guyana Forestry Commission Support Project* failed in practice to include clear components to deal with indigenous land tenure, resource rights and poverty despite the fact that the DFID-sponsored preparatory research for the project confirmed that the country's 60,000 Amerindians are desperately poor, have insecure land rights and endure seriously deficient social services. DFID's own evaluations of the project have upheld indigenous complaints that its project staff and managers did not follow up project preparation findings and did not take timely measures to address the social development aspects of the programme.

After five years, Amerindians had not participated to any meaningful extent in the project and their national organisation criticised the DFID intervention for supporting unhelpful forest law reforms that do not properly address indigenous land rights issues. DFID missions to investigate these concerns and a review of the project in 2000 acknowledge that the UK development agency's lack of a dedicated policy on indigenous peoples was one reason why its staff were not willing or were unable to back effective measures to ensure respect for indigenous peoples' rights and priorities.

In India, the indigenous and tribal movement complains that it has little say in DFID's policy dialogues on development with the national and state governments. They point out that although DFID's CSP for India and its state-level policy papers talk of human rights and empowering poor people,²⁸⁷ the outward signs are that there is an emphasis on the macro-economic aspects of UK aid policy, which promote privatisation, foreign direct investment and reductions in public subsidies. Indigenous leaders and activists point out that these aid policies contradict and disregard local priorities and may threaten to undermine livelihood security. At the grassroots level, local Adivasi communities and leaders in Tribal Development Corporations claim to be unaware of DFID's involvement in state-wide poverty reduction and sustainable livelihood projects, which raises questions about the quality of local participation in the design and implementation of these social development projects. In Andhra Pradesh, for example, citizens complain that they have not been adequately involved in the design and implementation of DFID's aid programme that is supposed to benefit them.²⁸⁸

²⁸⁵ AMAN (2003).

²⁸⁶ http://forestpeoples.gn.apc.org/FPProj/FPProj_base.htm

²⁸⁷ DFID (1999d) *India: Country Strategy Paper* http://www.dfid.gov.uk/Pubs/files/india_csp.pdf

²⁸⁸ See especially - Pimbert and Wakeford (2002) at page 58.

3.5.9 United States Agency for International Development (USAID)

USAID does not possess formal and dedicated internal policy on indigenous peoples. However, some of its sectoral policies do contain guidelines on indigenous issues. For example, USAID's handbook on *Roads and Environment* contains a whole chapter on indigenous peoples. The guide directs staff to relevant standards such as those contained in ILO Convention 169 and standards set out the internal policies of other agencies such as OD4.20 of the World Bank (see section 3.2 above).²⁸⁹ The agency's broader overseas development strategy, which promotes sustainable development also directly and indirectly addresses indigenous peoples' rights in development. For example, USAID's 2000 *Sustainable Development Strategy* – advises that US development assistance for democracy and governance programs intend to support: "...local, national, regional and international organisations that protect human rights, including the rights of workers, indigenous peoples, minorities and women." The Strategy pays particular attention to indigenous peoples in its approach to environmental conservation. The document affirms that:

“...USAID will focus on developing sustainable economic uses of biological resources; building local capacity for the management of biodiverse areas, including management of parks and protected areas; supporting innovative non-governmental conservation and research programs; encouraging the involvement of indigenous peoples and local communities at every stage of decision-making; and facilitating the setting of conservation priorities that respect the rights of indigenous peoples at the local, national and regional levels”.²⁹⁰

US commitment to promoting respect for indigenous rights in its natural resource projects is demonstrated in its project portfolio. One oft-cited example is its support for local management of protected areas such as the Kaa'iya National Park in lowland Bolivia, which is one of the few cases in which indigenous peoples have been actively involved in the management and administration of a park covering their traditional territories.²⁹¹ USAID has also promoted innovative inclusive policy formulation processes and community natural resource management projects with indigenous communities in SE Asia through its support for the WWF-US “Biodiversity Support Programme” (BSP). The BSP initiative operated between 1997-2001 and culminated in the international workshop held in Hundested, Denmark in March 2001 on "Indigenous Peoples and Biodiversity Governance" (see section 1.0).

The current signs are that USAID support for natural resource and biodiversity projects is being scaled down and increased emphasis is to be placed on poverty reduction. In 2002, the US government launched the Millennium Challenge Account,²⁹² which will allocate an extra \$ 5 billion to official US development assistance for projects and programmes that promote human rights and good governance in selected developing countries with a low average per capita income. Critics note that the focus on broad-brush poverty statistics means that the aid money under the MCA will concentrate on a limited number of countries (around 80) and bypass middle-income and developing countries where certain sections of the population suffer severe injustice, poverty and deprivation.²⁹³

²⁸⁹ USAID (nd) at Chapter 13.

²⁹⁰ USAID (2000) at page 14.

²⁹¹ Arambiza 1998; Beltrán 2000

²⁹² http://www.usaid.gov/press/releases/2002/fs_mca.html

²⁹³ Radelet (2003).

3.6 OECD-DAC Guidelines

Of special note for all major bilateral donor countries are the guidelines on sustainable development and poverty reduction compiled by the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD). DAC good practice guidelines are intended to assist and direct DAC Members to fulfil their international and domestic commitments relating to environment and development. Although the guidelines are not binding, those states that endorse them as members of the DAC do commit to implement the principles and directions in the guidelines in their aid policy. The guidelines therefore carry considerable moral weight for bilateral aid agencies who are members of the DAC. There are currently **23** DAC members. These include: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the UK, USA and the European Commission.

Several of the DAC guidelines promote human rights and a rights-based approach to development as already noted in section 1.4. A significant number of guidelines, including those on environmental assessment, resettlement and wetlands (Box 18) as well as those on sustainable development and poverty reduction make direct or indirect reference to indigenous peoples. The guidelines also emphasise the importance of international standards and governmental commitments under international agreements on human rights, environment and development [Box 19 and Box 20].

Box 18: Provisions in DAC Guidelines relating to indigenous peoples (I)

Available at: <http://www.oecd.org/EN/document/0,,EN-document-notheme-2-no-24-5782-0,00.html>

A. DAC Guidelines on Environmental Impact Assessment (DAC 1992a)

Assess project impact on indigenous peoples:

“The EIA should address all the expected effects on human health, the natural environment and property as well as social effects, particularly gender specific and special group needs, resettlement and impacts on indigenous peoples resulting from environmental changes” [3rd bullet, page 6]

Consider the views of affected communities:

“Active arrangements including access to information should be made wherever possible to obtain the views of the affected indigenous population on projects which could have significant environmental effects” [3rd bullet, page 7]

B. DAC Guidelines on Resettlement (DAC 1992b)

Recognition of customary tenure and the need for land-for-land compensation:

“Indigenous groups, ethnic minorities and pastoralists who may have informal customary rights to land or other resources taken for the project must be provided with adequate land, infrastructure, and other compensation. The absence of legal title to land by such groups should not be a bar to compensation...” [page 7] “...customary land ownership and usufruct rights must be recognised for compensation purposes...” [Annex, page 11]

Effective participation:

“The involvement of involuntary resettlers and hosts in planning prior to the move is critical. Particular attention must be given to ensure that women and vulnerable groups, such as indigenous people, ethnic minorities and the landless are represented and actively involved in such arrangements...” [Annex, page 10]

C. DAC Guidelines on wetlands and sustainable development (DAC 2000)

Adherence to international standards and commitments:

“All the member states of the OECD are either Contracting Parties to the Ramsar Convention or are in the process of becoming so. By this, they undertake to support the aims of the convention in their own countries.” In addition, the 5th COP in 1993 recommended that the conservation and wise use of wetlands should be included in multilateral and bilateral development cooperation programmes” [section C., first para]

Apply concept of integrated river basin management (IBRM):

IBRM should normally require...“an analysis of the socio-economic conditions of the various community groups, including cultural and traditional behaviour, and the distribution of natural and economic resources” [Box 1.4]

“The EIA should address all the expected effects on human health, the natural environment and property as well as social effects, particularly gender specific and special group needs, resettlement and impacts on indigenous peoples resulting from environmental changes” [3rd bullet, page 6]

Box 19: Provisions in DAC Guidelines relating to indigenous peoples (II)

Available at: <http://www.oecd.org/EN/document/0,,EN-document-notheme-2-no-24-5782-0,00.html>

D. DAC Guidelines on Sustainable Development Strategies (DAC 2001a)

Incorporate indigenous peoples' views into development planning:

Planning for sustainable development should be based on a long-term vision which "...should evolve from national and sub-national aspirations, taking into account those of socially marginalised groups...attention must be paid to the fact that the borders of modern states may sometimes cut across culturally distinct peoples who have different traditions and who live in special environments (for example, indigenous forest-dwelling communities)" [section 4, second para.]

Involve traditional institutions in baseline studies and accountability mechanisms:

"While formal monitoring and auditing is essential, local communities can also play an important role... traditional community fora have often proven important mechanisms for local accountability"... and for the collection of baseline data prior to implementing development programmes... [section 4, page 52]

Take into account international standards and intergovernmental commitments:

Country-level strategic planning processes need to recognise that... "there are a number of **internationally agreed commitments** for sustainable development, in areas such as trade, the environment, and the **rights of indigenous peoples** to their natural resources which need to be taken into account" [section 6, page 60]

E. DAC Guidelines on Poverty Reduction (DAC 2001b)

Respect for human rights and the rule of law:

Under the 1996 DAC strategy *Shaping the 21st Century*, DAC member governments agreed to promote the evolution of more stable, safe, participatory and just societies...these include capacity development for effective, democratic and accountable governance, the protection of human rights and respect for the rule of law" [at page 16]

Value of a rights-based approach:

"Powerlessness, injustice and exclusion perpetuate poverty – and make it worse. The poor need to be able to exercise their human rights to influence state institutions and social processes that affect their lives...Rights-based approaches to poverty reduction strengthen the norms and institutions that protect universal human rights..." [at page 19]

Indigenous poverty:

"Social categories known for severe poverty in several dimensions are indigenous, minority and socially excluded groups, refugees or displaced persons..." [section 1, page 41]

Box 20: DAC Guidelines on Rio Conventions on Sustainable Development

Development Assistance Committee – DAC (2002) *The DAC Guidelines – Integrating the Rio Conventions into Development Co-operation* OECD, Paris

Effective participation for adapting policies to indigenous needs and priorities:

These guidelines are based on the key principle that ... “effective participation, transparency and accountability are essential to effectively focus response, adaptation and protection strategies to the needs and livelihood strategies of local governments, communities and indigenous peoples and to resolve resource degradation issues and resource conflicts...” [section 1, page 23]

Prior informed consent and indigenous knowledge:

“...the CBD leaves benefit sharing policy to be defined by national law, with the active participation of local and indigenous communities. One effective way of handling access to genetic resources and benefit sharing is through contracts (Mutually Agreed Terms), based on the principle of Prior Informed Consent (PIC) of the communities whose resources or traditional knowledge are to be used. Ways to recognise the contribution of traditional knowledge include the development of community biodiversity registers, local access protocols and codes of conduct for collectors and users...Capacity development is needed in all these areas” [section 3, page 40]

Ecosystem approach of the CBD:

“The approach should consider all forms of relevant information, including scientific and indigenous and local knowledge, innovations and practices” [section 4, page 52]

Local governance and control over natural resources:

“The involvement of those concerned with resource use and management, particularly local government, communities and indigenous peoples, is essential for the sustainable management of natural resources...Effective community-based institutions are crucial for collective management of resources as well as in efforts to aid the poor in developing sustainable livelihoods. Community-based Natural Resource Management (CBNRM) is based on the recognition that local people must be involved in decision-making over their natural resources...” [section 4, at page 55]

Land tenure and ownership issues:

Subjects to be dealt with in CBNRM include “...enhancement of rural livelihoods and poverty reduction, land tenure (defining access and ownership rights), land use planning..., institutional development, training and capacity development (and) resource protection”. The CBD (as well as the Ramsar Convention) recognises the role and traditional dependence of many local and indigenous communities on biological resources...and provides opportunities for community management, protection of traditional knowledge, access and benefit sharing, and sustainable use” [section 4, page 56]

4.0 Conclusions and recommendations

This review finds that having a dedicated policy on indigenous peoples can help development agencies to implement a rights-based approach to development and empower indigenous rights-holders and communities by providing a basis for accountability. A specific policy can also improve development effectiveness, support better targeted development assistance, and serve as a useful yardstick for monitoring and evaluation. The review finds that in April 2003 **eight** international development agencies have formally adopted either global or regional public policies on indigenous peoples: EU/EC, UNDP, World Bank, Asian Development Bank, Danida, DGIS, AECI (Latin America) and BMZ (Latin America). The following key findings are enumerated and detailed below:

1) **There is significant variation in the standards, intent and approach of different targeted agency policies**

- > Five policies contain standards *explicitly* derived from, and linked to protections and principles established under international human rights, environmental and UNCED instruments: EU/EC, UNDP, Danida, DGIS and BMZ;
- > Three policies adopt an explicit *rights-based* approach (UNDP, DGIS and BMZ-regional policy), which primarily identifies indigenous peoples as *rights holders*. Two other policies indirectly apply a rights-based framework: EU/EC and Danida.
- > Multilateral development bank policies apply frameworks and standards for *participation, mitigation* and *benefit-sharing* that identify indigenous peoples as vulnerable and marginal populations that require special development measures to address their needs: World Bank and Asian Development Bank;

2) **Some policies do not meet internationally agreed standards on the rights of indigenous peoples.**

- > Two policies do not derive their provisions directly from international instruments and give primacy to national legislation with no or only secondary or incidental treatment of international standards: World Bank and Asian Development Bank, (international human rights instruments are not even mentioned in the World Bank policy);
- > At least three policies do not meet existing and emerging international standards on indigenous peoples, most notably in relation to protections against forced relocation and recognition and respect for land *ownership, property* rights: World Bank, ADB and AECI (1997 Strategy).
- > Three policies do not recognise and protect indigenous peoples' collective rights: World Bank, DGIS and AECI (1997 Strategy);

3) **Few policies have comprehensive operational standards**

- > Only three policies apply a broad set of *operational* rules and guidance for agency staff: World Bank, ADB and BMZ
- > Although the other five policies all feature at least a few operational instructions (e.g., for EIAs), the bulk of these policies contain only broad principles, political statements and priorities for official aid affecting or targeting indigenous peoples: EU/EC, UNDP, Danida, AECI, DGIS

4) Not all policies contain binding provisions

- > Four dedicated policies contain (at least some) procedural and substantive mandatory standards or principles that are binding on agency staff: World Bank, Asian Development Bank, Danida and BMZ;
- > Four dedicated policies are found to be non-mandatory, good practice guidelines, which do not contain binding standards: UNDP, EU/EC, DGIS and AECI.

5) Different policies suffer from a common pattern of substantive, textual and institutional shortcomings which undermine their usefulness.

- Failure to make reference to key international standards like ILO Convention 169 (e.g., World Bank, AECI 1997 Strategy);
- Lack of explicit standard on free and prior informed consent;
- Narrow application of free and prior informed consent – only in relation to knowledge and cultural property, not land and physical resources (e.g., World Bank, March 2001 Draft OP4.10)
- Deficient treatment of land tenure and territorial rights (e.g., AECI 1997 Strategy)
- Standards on property rights limited to intellectual property (e.g., AECI 1997 Strategy)
- Failure to properly recognise and address collective rights (e.g., DGIS, AECI)
- Limited regional or sectoral coverage i.e., not cross-cutting across the agency portfolio (e.g., World Bank 1991 policy, BMZ 1996 policy, AECI 1997 Strategy)
- Confusion over minority rights and the rights of indigenous peoples;
- No provisions on accountability, appeal and redress (see 6. below);
- Lines of responsibility for policy implementation unclear (e.g., AECI, Danida, DGIS, BMZ);
- Few institutional mechanisms to effectively implement the policy on the ground;
- Provisions to address the costs of policy oversight, implementation and monitoring not included (DGIS, AECI);
- Staff in the agency are not aware of the existence of the policy or have differing views as regards the status of the policy and its guidelines (e.g., BMZ 1996 regional policy);
- Lack of explicit options for participatory monitoring (AECI, Danida, DGIS, BMZ);
- No requirements for performance based indicators (all eight policies);
- Project and programme beneficiaries and civil society do not know about the policy (i.e. intended beneficiaries are unaware of agency commitments and standards that they may expect and invoke);
- Field staff and country delegations are not adequately trained in the relevance and application of the policy (e.g., EU/EC 1998 Resolution and working document);
- Policies lack internal consistency in the use of critical terminology, standards and benchmarks (e.g., ownership rights vs. use rights, consultation vs. informed participation etc.)

- Standards are not evenly incorporated across related policies (e.g., IDB 1998 policy on Resettlement vs. 1999 Resettlement guidelines)
- Lengthy preambular descriptive texts precede and overshadow substantive standards and operational rules (e.g., DGIS 1993 policy);
- Executive and bullet summaries (most easily referred to by staff) exclude key social standards embedded in the detailed sections of the policy (e.g., BMZ 2002 Forest Strategy);
- Policies lack provisions to specify how binding minimum policy standards are to be implemented in practice (e.g., what steps must be taken to secure land rights? When must these steps be carried out? (e.g., EU/EC policy; BMZ 2002 Forest Strategy);
- Vague, overly generalised or ambiguous language with little clear practical guidance on appropriate standards, benchmarks and procedures for development operations; (e.g., unclear when participatory social assessments, baseline studies and land tenure studies are required);
- Implicit requirements not spelt out (e.g., implicit protection against forced resettlement in EU/EC, Danida and DGIS policies);
- Critical issues are noted, but not incorporated as clear-cut benchmarks or operational requirements (e.g., mention of international standards in ADB 1998 policy);
- Contain derogations that undermine the utility of key safeguards and standards i.e., derogations which lack transparent criteria for the appropriate use of opt out clauses – leaving loopholes for discretionary and unaccountable application of the policy.

6) Few policies are linked to formal accountability and appeals mechanisms

Although most donor countries publicly endorse the need for improved accountability in international development, **not one** bilateral agency was found to have instituted its own formal and readily accessible appeals or complaints procedure. Even BMZ and Danida, which are the only bilateral agencies to have binding rules, do not have formal accountability mechanisms easily accessible to citizens. There are no mechanisms which people can use when they consider their rights and interests have been either disregarded or violated.

At the moment, beneficiaries, affected rights holders and concerned citizens in developing countries are only able to raise concerns *informally* with agency staff, project officials, embassy delegations or members of evaluation missions (and then only if the latter staff or consultants happen to visit the aggrieved party's community or widely announce their presence in a country, district or region).

More formal complaints can be raised indirectly by writing to relevant Ministers or through the parliaments and parliamentary committees in donor countries by which development and foreign ministries are accountable to taxpayers and the government. In this instance, affected communities normally need to secure the help of Northern NGO intermediaries from the same donor country to make their complaints known on their behalf. They may sometimes require assistance to help them *travel to the donor country* to raise concerns directly.

7) **The formal accountability mechanisms that do exist are not very effective**

- > Three multilateral agencies have official *centralised* complaints procedures through which rights holders and citizens can raise concerns and seek redress for the violation of mandatory agency standards and guidelines on indigenous peoples i.e. the World Bank Inspection Panel (IBRD-IDA), the IFC Compliance-Advisor Ombudsman, the Asian Development Bank Inspection Committee and Inter-American Development Bank Independent Inspection Mechanism.
- > Practical experience of affected communities which have appealed to these bodies demonstrates that the existing complaints procedures are not very effective at resolving their problems. In short, current accountability arrangements can put the spotlight on implementation problems and validate local criticisms, but they are not effective mechanisms for corrective action and redress. This is because the existing complaints and appeals mechanisms developed so far:
 - (i) are distant from development operations and affected communities
 - (ii) depend on infrequent field investigations
 - (iii) apply technical and cumbersome procedures
 - (iv) are slow to respond to complaints
 - (v) lack staff and resources
 - (vi) are not fully independent
 - (vii) are constrained by narrow mandates (set by governing body of the agency)

8) **There is an uneven approach to the formulation and adoption of policies on indigenous peoples by international development agencies. A significant number of multilateral and bilateral agencies have no dedicated policy and have no current plans to develop one.**

- > Nine multilateral agencies have no dedicated formal policy on indigenous peoples at the beginning of 2003, and many do not currently have plans to develop one (e.g., Inter-American Development Bank, African Development Bank, FAO, UNEP, IFAD, WHO etc.). Disinclination to develop a dedicated policy among some multilateral agencies is due - in some cases - to resistance by intergovernmental members in the agency's governing body (e.g., Inter-American Development Bank) or to conceptual objections by technical staff that consider targeted policies divisive (e.g., FAO);
- > Some multilateral agencies prefer to adopt non-binding strategies or work programmes on indigenous peoples rather than of mandatory operational policies (IDB, WHO) [However, in April 2003 there are signs that the IDB may recommend the development of a binding policy on indigenous peoples in its forthcoming Strategy on Indigenous Peoples and Development]
- > Two bilateral agencies have *plans* to adopt a targeted policy on indigenous peoples, though there are no guarantees if or when such policies will be adopted: NORAD and CIDA.
- > Seven of bilateral agencies do not have current plans to develop such a dedicated public operational policy: SIDA (Sweden), Finland, DGIC (Belgium), DDC (Austria), SDC (Switzerland) DFID (UK), USAID.

9) Some agencies have chosen to develop internal guidelines.

- > At least two agencies possess (or are updating) guidelines or good practice notes or checklists on indigenous peoples for use by their staff, but do not have a dedicated policy: IDB and DFID.
- > Four agencies do not have specific policies, but have passed resolutions or formulated broad *internal* principles on indigenous peoples: WHO, UNHCR, UNESCO, IFAD.

10) A number of bilateral development agencies consider that indigenous peoples' issues are adequately covered by their general agency policies on human rights, good governance and poverty reduction.

- > Most bilateral agencies have budgets that provide support for human rights NGOs and development NGOs, which undertake progressive practical work with indigenous peoples in rights and capacity-building issues at the national and international levels.
- > Four bilateral agencies identify indigenous peoples as a "target" or priority theme within their human rights, good governance or rule of law policies and programmes: SDC (Switzerland), DDC (Austria), Finland and USAID.
- > A common view expressed by some development agencies is that given their central mission to reduce poverty in developing countries and the high levels of poverty endured by indigenous peoples, their work will involve and benefit indigenous communities: SDC (Switzerland) and DGIC (Belgium).

11) Several agencies are in the process of revising their existing policies and/or plan to update their policies in the near future. Other agencies are being urged to update their policies.

- > The World Bank (IBRD and IDA) is currently revising its Indigenous Peoples Policy which is due to be completed by mid-late 2004 (though the ongoing controversy over the policy might cause the schedule to slip). The whole revision process has been surrounded by controversy as indigenous peoples complain that their key recommendations have not so far been incorporated in the revised drafts and the provisions do not meet international standards and guarantees on the rights of indigenous peoples (section 2.2);
- > BMZ (Germany) plans to update its 1996 regional policy on indigenous peoples in Latin America, but has not yet commenced the revision process;
- > AECI is in the process of updating its 1997 strategy in what has been a highly participatory and progressive process involving indigenous organisations and civil society in Latin America and Spain. The process has resulted in a much improved strategy which is under consideration by the Spanish government;
- > Danida is being urged to update its 1994 Strategy;
- > Indigenous peoples' organisations and support NGOs are pressing DGIS (Netherlands) to revise and update its 1993 policy in a fully public process commencing with a participatory review of the existing policy.

12) There is often a lack of awareness among the staff of development agencies about the existence of a specific policy. Ambiguity also arises

among different staff regarding the purpose and status of policy provisions (e.g., BMZ 1996 policy; EU/EC 1998 policy).

Recommendations:

- ❑ Multilateral and bilateral development agencies should develop specific policies on indigenous peoples with the aim of improving development effectiveness and empowering indigenous communities affected directly or indirectly by their development planning and field operations;
- ❑ Dedicated policies must be backed up by associated accountability and appeals mechanisms to ensure rights-holders and affected communities can invoke the policy to claim their rights or seek redress;
- ❑ To this end, development agencies should support collaborative initiatives aimed at identifying models for project and programme accountability, including establishment or strengthening of effective, user friendly mechanisms by which indigenous peoples and others may raise issues of policy compliance and seek redress for damages sustained as a result of failure to respect their rights and failure to comply with policy requirements;
- ❑ All international development agencies should develop a specific formal and mandatory public policy on accountability and appeals standards for their official aid and development operations;
- ❑ Specific policies on indigenous peoples and development should be based on and be consistent with international human rights and environmental standards;
- ❑ Policies should be formulated with direct and substantial input from indigenous peoples themselves;
- ❑ To be useful to indigenous peoples, a policy must contain practical *binding* operational standards for development agency managers and staff in relation to the steps necessary to implement key policy *requirements*;
- ❑ As a minimum, operational standards should contain requirements to secure land ownership, tenure and resource rights; recognise the right to free prior and informed consent and exclude projects or programmes involving forced relocation;
- ❑ Use the United Nations Draft Declaration on the Rights of Indigenous Peoples and *up-to-date* best practice recommendations such as the World Commission of Dams as a source of policy standards;
- ❑ Agencies currently developing new policies or revising existing guidelines should avoid the common weaknesses in existing policy instruments identified in this review (see above);
- ❑ Allocate adequate resources, training and staff to properly apply the policy across the agency and cover the costs of its implementation in development projects and programmes;
- ❑ Development agencies should ensure that their Country offices and missions are familiar with policies on indigenous peoples and that information about and compliance with these policies is a formal part of discussions with government counterparts and implementing bodies;
- ❑ Involve indigenous peoples and their representative organisations in monitoring, evaluating and reviewing policy implementation.

5.0 Contacts and further information²⁹⁴

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Country offices and delegations:

http://europa.eu.int/comm/external_relations/repdel/index_rep_en.cfm

Project database: NOT FOUND

Indigenous Peoples pages: http://europa.eu.int/comm/external_relations/human_rights/ip/index.htm

ii) World Bank Group

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The World Bank
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Regional and country offices: via
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20041066~menuPK:34582~pagePK:43912~piPK:44037.00.html>

Project database: <http://www.worldbank.org/html/opr/procure/MOS/contents.html>

Indigenous peoples pages: <http://lnweb18.worldbank.org/essd/essd.nsf/Indigenous/home>

Appeals mechanisms: <http://wbln0018.worldbank.org/ipn/ipnweb.nsf/> (IBRD and IDA)
<http://www.cao-ombudsman.org/ev.php> (IFC and MIGA)

iii) Inter-American Development Bank

²⁹⁴ Contact persons have not been identified for FAO, IFAD, UNEP, UNESCO, UNICEF and UNHCR.

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Regional and country offices: <http://www.iadb.org/hrd/phone/co.html>
Approved project database: http://www.iadb.org/exr/english/projects/projects_appd_country.htm
Proposed Project database: http://www.iadb.org/exr/english/projects/projects_prop_country.htm
Appeals mechanism: <http://www.iadb.org/cont/poli/investig.htm>
Indigenous peoples pages: <http://www.iadb.org/exr/topics/indigenous.htm>

iv) Asian Development Bank

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Regional and country offices: via <http://www.adb.org/About/field.asp>
Project database: <http://www.adb.org/Projects/profiles.asp>
Appeals mechanism: <http://www.adb.org/Documents/Policies/Inspection/default.asp#contents>

Specialised United Nations agencies

This review has only identified a few public contact points in the UN, though the UN does have an internal system of focal points on indigenous peoples. See also http://www.un.org/partners/civil_society/ngo/n-indig.htm

v) United Nations Development Programme

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Regional and country offices: via <http://www.undp.org/dpa/coweblinks/index.html>
Project database: <http://www.adb.org/Projects/profiles.asp>
Indigenous peoples pages: <http://www.undp.org/csopp/CSO/NewFiles/ipindex.html>

vi) United Nations Environment Programme

UNEP
PO Box 30552
Nairobi
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ipainfo@unep.org

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vii) Food and Agriculture Organisation

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Regional offices: Via <http://www.fao.org/UNFAO/e/Wcont-e.htm>
Project database: No single link found.
Home page: <http://www.fao.org/>

viii) World Health Organisation

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Regional and liaison offices: <http://www.who.int/about/contactregional/en/> and
<http://www.who.int/about/contactliason/en/>
Project database: No link found.
Home page: <http://www.who.int/en/>

ix) UNESCO

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Country offices: http://portal.unesco.org/en/ev.php@URL_ID=6290&URL_DO=DO_TOPIC&URL_SECTION=205.html
Project database: No link found.
Home page: <http://www.unesco.org/>

x) UNICEF

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info@unicef.org

Country offices: via <http://www.unicef.org/uwwide/region.htm> and <http://www.unicef.org/uwwide/map.htm>
Project database: No single link found.
Home page: <http://www.unicef.org/>

xi) United Nations High Commissioner for Refugees- UNHCR

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CH-1211 Genève 2 Dépôt
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Tel : +41 22 739 8111

Country offices: via <http://www.unhcr.ch/cgi-bin/texis/vtx/contact>
Project database: No single link found.
Home page: <http://www.unhcr.ch/cgi-bin/texis/vtx/home>

xii) Indigenous Peoples Fund

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Current Project database: <http://www.fondoindigena.org/proyjec.htm>
Proposed Project database: <http://www.fondoindigena.org/proynuevos.htm>
Home page: <http://www.fondoindigena.org>

Bulletins: <http://www.fondoindigena.org/boletines.htm>

BILATERAL AGENCIES

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Embassies and country offices: No link in English found
Project database: No link in English found.
Home page: <http://www.um.dk/danida/> See also <http://www.um.dk/english/dp/index.asp>

b) DGIS - Netherlands

No readily available information in English found.

c) Spanish Agency for International Co-operation (AECI)

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Technical Co-operation Offices (OCT): Link not found
Project database: http://www.aeci.es/9-Proyectos/indigena/proyectos_actividades.htm

c) BMZ/GTZ

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GTZ/KfW country offices: Link in English not found.

Project database: Link in English not found.

d) CIDA

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Regional and country offices: <http://www.dfait-maeci.gc.ca/world/embassies/cra-en.asp>
Project database: various pages via <http://www.acdi-cida.gc.ca>
Indigenous Peoples Partnership Programme (IPPP):
http://www.acdi-cida.gc.ca/cida_ind.nsf/vLUallDocByIDEn/4AA3AD2DA5490E9985256C71004AD0AF?OpenDocument

e) NORAD

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Country offices/embassies: <http://www.embassies.mfa.no/cgi-bin/wbch3.exe?html=../publishing/top/index.html&p=2728>
Project database: no links found

f) SIDA-Sweden

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Country offices/embassies: <http://www.utrikes.regeringen.se/inenglish/missions/index.htm>
Project database: no links found.

g) Ministry of Foreign Affairs of Finland

No contact information in English found on the internet.
See: <http://global.finland.fi/english/newpoli.html>

h) DGIC - Belgium

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Country offices/embassies: via <http://www.diplomatie.be/en/addresses/abroad/default.asp>
Project database: <http://www.gm-unccd.org/FIELD/Bilaterals/Bel/Dgic/Dgic.htm>
See also: <http://www.diplomatie.be/en/default.asp>

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Country offices/embassies: via <http://www.sdc.admin.ch/worldview.php?userhash=94139&l=e&nav=4.4.4.4>
Project database: search <http://www.sdc.admin.ch/worldview.php?userhash=94139&l=e&nav=4.4.4.4>
Home page: <http://www.sdc.admin.ch/mainportal.php?userhash=94139&nav=1.1.1.1&l=e>

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Country offices: via http://www.dfid.gov.uk/AboutDFID/files/dfid_divisions.htm#DFID

Project database: <http://www.dfid.gov.uk/DFIDAroundWorld/aida.htm>

l) USAID

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Fax: +1 202-216-3524

Regional and mission offices: http://www.usaid.gov/procurement_bus_opp/osdbu/guide10a.htm See also
<http://www.usaid.gov/regions/>
Home page: <http://www.usaid.gov/>

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Annex I

Indigenous Peoples and Biodiversity Governance

The Hundested Recommendations²⁹⁵ for Donor Best Practice

The underlying concerns —

- Indigenous Peoples are marginalized and impoverished.
- Their lands and waters harbour endangered reservoirs of Earth's biodiversity.
- Cultural and biological diversity are both being diminished by inappropriate development and poor governance.
- Efforts to reverse negative trends can succeed if there is a coordinated donor effort to:
(a) actively apply best practices that strengthen Indigenous Peoples' participation in civil society; (b) nurture more positive partnerships between governments and Indigenous Peoples; and (c) encourage the private sector to respect human rights and biodiversity.

Recommendations for Donor Best Practice:

Recognizing that there is great diversity among donors and among Indigenous Peoples, these general recommendations can serve as the basis for dialogue to develop best practices in particular circumstances.

Nine Key Principles – the Foundation of Best Practice

- Have a written policy. Enforce safeguards – do no harm.
- Have direct contact and relationships with IPs.
- Base relationships on respect, mutual learning, and reciprocal accountability.
- Empower and effectively engage indigenous social and political structures.
- Stay the course. Longterm relationships are key to success.
- Be transparent.
- Support IPs in efforts to address core social issues that affect all citizens.
- Raise the priority of indigenous rights and environmental concerns among other competing priorities during all bilateral and multilateral negotiations.
- Value donor coordination and work together on these issues.

²⁹⁵ These “best practice” recommendations emerged from a Roundtable & Workshop, held in Hundested, Denmark, 7-9th March 2001, where representatives of multilateral, bilateral and private donors exchanged insights and experiences with indigenous participants from Asia, Europe, the Americas, Africa and the Arctic. The workshop was co-sponsored by the Biodiversity Support Program, Forest Peoples' Programme, International Work Group on Indigenous Affairs, The Alliance of Indigenous-Tribal Peoples of the Tropical Forests, and World Wide Fund for Nature-Denmark. The Roundtable was funded by the United States Agency for International Development (USAID), but the perspectives expressed herein do not necessarily represent the views of USAID.

Best Practice in Policy

Donors demonstrate leadership amongst nations and toward the private sector. They lead by supporting policies that create political space and enabling conditions for Indigenous Peoples to exercise full benefits of citizenship and participate in civil society as a collective group co-existing within the larger nation state and international society.

- Strengthen internal policies on Indigenous Peoples. Periodically review them. Such policies are valuable tools for reforming project design and implementation. Donors would be in a stronger position to coordinate dialogues with governments if more donors had Indigenous Peoples policies.
- Recognize and address unforeseen negative impacts from projects. Don't abandon the area and its people to struggle to adapt to negative impacts alone.
- Respect and support indigenous decision-making structures. Value the diversity of locally-adapted institutions.
- Respect lessons learned from IPs. Adapt policies to reflect lessons learned.
- Keep ILO 169 and IPs' rights high on the agenda at all international events and negotiations.
- Encourage high level government dialogues on IPs' rights.
- Use CBD (Articles 8J, 10 C), ILO 169, UN Universal Declaration of Human Rights, Agenda 21, and other relevant international instruments and treaties as standards when negotiating with governments, including Trade issues as well as loan and project assistance. Use a human rights screen on all projects, loans, and other bilateral and multilateral negotiations. Support public and donor staff awareness of the treaties and their application.
- Enhance staff understanding and capacity in embassies and donor offices so that IP policies are applied in practice and in negotiations. Provide funding and career incentives for informal networks of concerned staff in headquarters and field offices to create synergies, learn, and share insights and concerns with all staff.
- Leverage private sector change by linking funding to government's agreements to use ILO 169 as a code of conduct for private companies operating within their borders.
- Encourage private sector commitment through codes of conduct, certification processes, etc. Create a budget line for direct interaction with IPs, eliminate locked timeframes, and hire adequate staff resources to reach out and work directly with IPs.
- Establish mechanisms for consulting with IPs and facilitate roundtables for IPs to meet with private companies and government, prior to granting loans or other support to private sector to extract oil, minerals or other resources from indigenous lands and waters.
- Under repressive governments, facilitate informal dialogues between IPs and governments to open channels for communication and positive progress.
- Develop special mechanisms for seeking and responding to needs expressed by IPs, because they are often the most marginalized members of civil society.
- Create Consultative Groups on IPs or other donor coordination mechanisms at regional and national levels.

Best Practice in Projects and Programmes

Donors demonstrate leadership by implementing projects that adhere to standards set by donor policies, human rights law and international agreements, and respond to Indigenous Peoples' needs, strengths, and interests.

- Support self-determined projects to support autonomy and capacity strengthening to reach IPs' goals. Recognize, value and support IPs' plans and strengths during project design. Develop and use MOU templates that define roles.
- Support efforts to legally recognize IPs' collective rights to lands, waters, and resources.
- Develop guidelines and mechanisms for informed consent.
- Assist countries to develop legislation and effective mechanisms for protected areas co-management or direct management by IPs.
- Adapt to the fact that Indigenous Peoples' organizations are not NGOs. They need holistic strengthening, not sectoral approaches to education, health, and environment.
- Move from showcasing special IPs' projects to mainstreaming IPs' concerns into portfolios.
- Use grant technical assistance during project preparation for loans in order to lay the groundwork that influences governments' projects implemented with loans.
- Seek creative options for direct funding. Find creative solutions to the problem that IPs cannot register as organizations in many countries where projects are demand driven by governments that repress IPs' interests.
- Review IPs' concern that NGO intermediaries are not accountable to IPs. Insist on mechanisms of accountability and respond to the problems that are revealed.
- Don't support projects with negative impacts. Encourage governments to respect the same precautionary principle.
- Learn how to effectively use IPs' political structures so that cultures are not eroded as they adapt to development.
- Provide longterm funding and other non-financial support.
- Support reciprocal accountability. Involve IPs in evaluations, and use benchmarks and indicators they select.
- Develop positive criteria for good project management and goals through dialogue with IPs.
- Create grantmaking and project processes that fit IPs' needs and strengths. Simplify processes. Avoid imposing onerous reporting requirements. Accept alternative reporting mechanisms, such as videos, and photographs with tape recorded oral messages. Deadlines and inflexible time frames don't fit indigenous culture. Develop alternative frameworks that enable IPs to achieve their goals.
- Recognize that language can be a major impediment to good communication and invest in translation.
- Be transparent about investments' size and distribution of funds. Disseminate the information in local language.

- Accept and value lessons learned by working together.
- Support traditional stewardship and its adaptation to changing conditions. Support existing, unwritten IPs' plans and strategies for resource management.
- Avoid creating or supporting new organizations that conflict with existing indigenous authorities.
- Do intensive case studies of projects that have affected IPs to find best practices and learn from failures.
- Find ways to level power differences in multi-stakeholder committees that oversee projects.

Best Practice in Non-Project Assistance

Indigenous nations are not NGOs; they require different sorts of strengthening. Donors can support innovative forms of assistance that respond to the expressed needs of Indigenous Peoples so they may be fully informed and capable of strategic decision-making, policy dialogue, project implementation, and otherwise participate in civil society at local, national and international levels.

Build skills & knowledge:

- Increase technical capacity amongst IPs. Support university scholarships for training teachers and other professionals.
- Support the way people organize themselves, beyond NGOs.
- Invest in IPs' leadership, systems, and human resources development.
- Fund culturally supportive education in local languages.
- Strengthen IPs' networks' capacities and opportunities to build relationships with donors.
- Build the foundation for informed consent and participation. Raise public awareness of indigenous issues. Build indigenous awareness of their rights and responsibilities as citizens.
- Strengthen broad public awareness of international conventions that their government has signed, and their obligations under those agreements. Provide training in human rights laws and standards, followed by assemblies in every indigenous village to discuss the implications.

Invest for the longterm:

- Support creative financing mechanisms for IPs, such as trust funds under IPs' control.
- Fund core costs for IPs' organizations and train them in sustainability mechanisms. Don't only fund activities.
- Develop alternative ways to access credit. Nurture indigenous saving societies and credit unions to build financial independence without risking lands as collateral.

Create new mechanisms for strengthening Indigenous Peoples:

- Involve Indigenous Peoples in strategic planning, national assessments, and reconstruction efforts where public involvement is key. Assist Indigenous Peoples to join other civil society associations to assess national and local governance. Involve Indigenous Peoples as key players in negotiation and implementation of Peace Accords.
- Build IPs' capacity to effectively use donors. Disseminate information about donor processes, policies, interests and concerns. Enhance channels for IPs to access donors.
- Use partnerships between private foundations and bilateral/multilateral donors to overcome internal bureaucratic barriers to creative options.
- Nurture effective conflict resolution mechanisms at local and national levels.
- Research and develop culturally appropriate ways to encourage IPs to address gender and equity concerns.

Support communication and networking:

- Support networking and opportunities for IPs to share lessons and ideas within and between regions.
- Support translation of information into local languages, written, by radio or traveling theatre.
- Create networks of IPs living with protected areas, to share experiences and approaches.
- Develop regular channels of communication between IPs and donors. Talk on a frequent and regular basis.

ⁱ It is also important to note that this review does not address the specific policies and standards on indigenous peoples adopted by international agencies and organisations dealing with environmental conservation and natural resource management (e.g., Convention on Biological Diversity, Global Environment Facility (GEF), United Nations Forum on Forests (UNFF), World Commission for Protected Areas, IUCN, Ramsar Convention, Forest Stewardship Council, ITTO, WWF etc.) - see Colchester (2000) and (2001a). It is hoped that a comprehensive review of these important standards which have clear relevance to overall sustainable development will form the focus of a second related review to be conducted by the Forest Peoples Programme. Again, due to time and resource limitations, this study has not been able to evaluate the policies and initiatives of the UN Centre for Human Settlement (HABITAT), the World Food Programme (WFP) as they relate to indigenous peoples. Likewise, the technical programmes and policy dialogues of international standard-setting bodies such as the ILO (UN 2001d), WTO, UNCTAD, UNIDO, WIPO (UN 2001g) and the Commission on Sustainable Development are not examined systematically in this review.

ⁱⁱ International human rights law features a particular set of norms that confirm and protect the individual and collective rights of indigenous peoples, which are distinct from minority rights (cf. Daes (1996) at paragraph 60). On international norms and jurisprudence relating to the rights of indigenous peoples see, for example, Human Rights Committee – HRC (1990),(1992),(1999a,b,c);(2000); Committee on the Elimination of Racial Discrimination (1997),(2001a,b),(2002) and the Inter-American Commission of Human Rights – IACHR (1986),(2000) and (2001).