

**Briefing**  
**prepared by the Forest Peoples Programme**  
**Concerns about the revision**  
**of the World Bank Policy on Indigenous Peoples**

This briefing aims to:

- 1) Outline the safeguard provisions in the World Bank's existing Indigenous Peoples Policy (OD4.20);
- 2) Provide a background to the World Bank's revision of its Indigenous Peoples Policy;
- 3) Highlight the substantive concerns of indigenous peoples regarding the March 2001 draft revised policy (Draft OP/BP4.10) and their criticisms of the revision process;

**The World Bank's existing policy on Indigenous Peoples (Operational Directive 4.20)**

1. The World Bank's current policy on indigenous peoples, known as OD4.20, was adopted in 1991 and is still in force. It is one of ten so-called "safeguard" policies that are supposed to protect the environment and vulnerable social groups from the adverse impacts of Bank-financed operations. The central objective of the 1991 policy towards indigenous peoples is to:

*"ensure that the development process fosters full respect for their dignity, human rights and cultural uniqueness"* (para. 6)

2. OD4.20 also seeks to guarantee:

- Borrower commitment to secure indigenous rights
- Land tenure and resource security
- Protection from adverse effects during the development process
- Participation in project design, implementation and monitoring
- Receipt of culturally appropriate development and economic benefits
- Rejection of projects where negative impacts cannot be adequately ameliorated<sup>1</sup>

3. The Policy requires Bank staff and borrowers to develop an Indigenous Peoples' Component or Indigenous Peoples Development Plan (IPDP) for any investment project that affects indigenous peoples (OD4.20, para. 13). This plan or component is supposed to involve:

- an assessment of the national legal framework regarding indigenous peoples
- compilation of baseline data about the indigenous peoples to be affected
- a mechanism for the legal recognition of indigenous peoples' rights, especially tenure rights
- sub-components on health care, education, legal assistance and institution building
- capacity-building of the government agency dealing with indigenous peoples
- a clear schedule for fitting actions related to indigenous peoples into the overall project, with a clear and adequate budget<sup>2</sup>

4. Indigenous organisations complained that OD4.20 had been developed and finalised *without* indigenous participation. Indeed, indigenous organisations such as COICA *had* made clear recommendations to the World Bank in 1990 demanding a policy which included:

- 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.<sup>3</sup>

5. OD4.20 has been criticised for failing to meet international standards on the rights of indigenous peoples, such as those set out in ILO Convention 169 and for falling far behind international standards as they have developed since 1991. Despite these serious failings, OD4.20 is considered to be an improvement the Bank's previous policy on Indigenous Peoples (known as OMS 2.34). Unfortunately, the quality of implementation of OD4.20 in the 1990s has been patchy and sometimes poor (see Briefing on Accountability and Development Quality Issues).

### **Revision of the World Bank Indigenous Peoples Policy:**

6. 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.

### **First Round of Public Consultations on Approach Paper: 1998-99**

7. The revision of the Bank's policy began in 1994 with the formation of an ad hoc Working Group within the Bank. Several years were spent on consulting *within* the World Bank Group on possible changes to the policy. The revision process first moved into the public domain in 1998 with the circulation of an "Approach Paper" to indigenous peoples' organisations, governments and NGOs. The Approach Paper centred on the need to clarify definitions and requirements and to ensure that "minimum standards" are maintained in the revised policy. In this first round of consultations indigenous peoples' organisations, human rights experts, human rights and development NGOs and academics recommended that any revised policy should contain stronger and clearer safeguard provisions. Common recommendations made by indigenous peoples in different countries included proposals that any policy revision should:

- be based on a thorough participatory *implementation review* of the existing policy (OD4.20) to ensure that any revisions are derived from practical lessons based on the actual experience of indigenous peoples with World Bank operations;
- address the concerns and priorities of indigenous peoples;
- adopt the indigenous right to "self-identification" in accordance with the principles set out in Article 8 of the UN Draft Declaration on the Rights of Indigenous Peoples;
- further specify that securing indigenous land and resource rights be an essential precondition for project appraisal and approval with concrete benchmarks to ensure compliance;
- require "effective" participation by indigenous peoples affected by Bank loan operations throughout the project cycle;
- prohibit involuntary resettlement of indigenous peoples. Resettlement may only take place with the full, prior, free and informed consent of affected indigenous communities;
- recognise the indigenous right to "prior, free and informed consent" to any developments proposed on their lands and territories as specified under Article 30 of the UN Draft Declaration on the Rights of Indigenous Peoples;
- include an environmental audit in baseline studies that properly values indigenous peoples' resources and territories. Any use of indigenous knowledge in such studies must incorporate adequate intellectual property rights safeguards and benefit sharing mechanisms;
- ensure consultations include traditional leaders as well as local indigenous organisations.

- require the involvement of affected indigenous peoples in *negotiations* between the World Bank and the client government regarding loan agreements;
- include requirements for involving local, national and regional indigenous organisations in active tracking and monitoring of World Bank operations through the whole project cycle;
- require the proactive circulation of information in local languages to indigenous organisations and communities affected by Bank loan operations;
- be consistent with international standards on the rights of indigenous peoples;
- incorporate indigenous recommendations in the provisions of the revised policy.<sup>4</sup>

### **Second Round of Public Consultations on March 2001 Draft OP/BP4.10**

8. After further lengthy internal consultations among Bank staff and governments, the World Bank released its first draft of a revised Indigenous Peoples Policy to the public in March 2001. Public consultations began in July 2001 and ran until February 2002 and involved 25 meetings involving participants from xx countries.<sup>5</sup> However, indigenous peoples strongly criticised the consultation meetings for being rushed and substantially inadequate (see below). They also expressed their severe disappointment that the revised draft, now known as OP/BP 4.10, has disregarded many of their key recommendations made in the first round of public consultations in 1998.

9. Analysis of Draft OP/BP 4.10 reveals that it does partly incorporate some indigenous recommendations through its recognition of the need to obtain prior consent for the commercial use of cultural resources and to ensure indigenous peoples receive benefits from such use (Draft OP4.10, para. 16). However, this draft provision does not require protection of indigenous peoples' intellectual property rights and is inconsistent with international standards such as those in Article 8j of the Convention on Biological Diversity, which requires equitable benefit sharing.

10. A major and fundamental criticism of Draft OP/BP4.10 is that it *fails* to contain any requirements to secure indigenous peoples' rights to own, control and manage their traditional lands and territories (see Briefing on "Poverty Alleviation, Property Rights and the World Bank's Draft Operational Policy 4.10 on Indigenous Peoples"). According to an analysis made by FPP, of a total of 20 key indigenous recommendations made in 1998, Draft OP/BP4.10 includes just 2 (some measure of protection for cultural resources and inclusion of sacred lands in the policy's provisions on land and resources).<sup>6</sup> It is worth noting that the draft policy also *partially* or *indirectly* incorporates 5 other indigenous recommendations (on gender (Draft OP Para. 9(a)), consultation with traditional leaders (Draft OP Para. 9a), respect for indigenous cosmovision (Draft OP. Para.9), pro-active information disclosure (Draft OP. Para. 14a and 14b)) and direct funding for indigenous community development (Draft OP. Para. 18) (see analysis in Annex A.).

### **Indigenous peoples reject March 2001 Draft OP/BP4.10**

11. The World Bank itself maintains that the Draft revised policy is stronger than the existing policy – claiming it has “new mandatory requirements” relating to the commercial use of natural and cultural resources, participation and benefit sharing mechanisms.<sup>7</sup> Despite these assurances, indigenous peoples' organisations who took part in the second round of public consultations held in the summer and winter of 2001 rejected the March 2001 draft revised policy as a backward step that will not further the rights of indigenous peoples in development.

12. Despite repeated assertions by the Bank in its documentation that the revised policy has not been weakened, critics point out that it no longer contains mandatory provisions to safeguard indigenous peoples' rights to land and resources (as already noted in para. 10 above). Analyses carried out by indigenous NGOs and support NGOs find the Draft policy to be *weaker* than the existing policy regarding because its provisions have lost vital preconditions that must be met before a project is approved. With the possible exception of the new proposed provision on cultural resources (Draft OP4.10 para 16), these analyses consider the other allegedly additional mandatory safeguards in the revised Draft policy are ineffective stipulations that add little or nothing to the existing policy, and do not ensure compliance with international standards on the human rights of indigenous peoples as set out in international law.<sup>8</sup> Critics argue that it therefore cannot comply with its own central objective which is to respect the human rights of indigenous peoples affected by Bank loan operations (Draft OP/BP4.10 para. 1).<sup>9</sup> More broadly,

indigenous peoples complain that the March 2001 Draft revised policy:

- ❑ 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)
- ❑ does not recognise the right of prior informed consent
- ❑ falls below international human rights standards for indigenous peoples
- ❑ fails to prohibit involuntary resettlement of indigenous peoples
- ❑ does not apply self-identification as the primary trigger for the policy
- ❑ does not apply to full structural adjustment loans
- ❑ does not require indigenous monitoring and tracking of World Bank operations
- ❑ lacks a general requirement for detailed baseline studies to determine indigenous peoples' priorities and concerns
- ❑ only requires a social assessment in cases where Bank staff unilaterally decide that a development operation may have adverse impacts

#### *Criticism of flawed public consultations on Draft OP/BP 4.10*

13. The consultation process has also been roundly condemned for being rushed and for lacking informed and representative indigenous participation, and for failing to meet the Bank's own guidelines on meaningful public consultation.<sup>10</sup> Participants who took part in the consultations report several fundamental problems with the consultations (see, for example, Annex B):

- letters to the Bank's policy revision team received a perfunctory/ inadequate response<sup>11</sup>
- many in-country meetings did not provide sufficient time for open and reasoned discussion, being largely taken up with presentations by Bank staff: of the total of 25 meetings, 11 of them only lasted for one day<sup>12</sup>
- most meetings lacked a timely *prior* provision of relevant documentation<sup>13</sup>
- some meetings suffered from poor moderation and translation facilities<sup>14</sup>
- several meetings did not feature balanced representation (e.g., in Latin America, India).<sup>15</sup>

14. Given these serious flaws, some indigenous organisations refused to accept the meetings as consultations e.g.,

*"The external stakeholders' consultation at New Delhi, 26 November 2001, cannot be considered as truthful to the objectives of this consultation...its recommendations cannot be seen as reflecting the perceptions and views of the indigenous peoples of India in any way"* (Joint Statement by indigenous representatives present at the stakeholders' consultation, India, 26/11/01)<sup>16</sup>

*"...this space for discussion established by the World Bank is not considered by our organisations as a consultation, but rather as an intercultural dialogue and exchange of experiences and information which should generate support for a genuine consultation with indigenous peoples"* (Joint statement by representatives of the Confederation of Indigenous Nationalities of Ecuador (CONAIE) and the National Indian Council of Venezuela (CONIVE), Cuzco, 23 October 2001)<sup>17</sup>

*"...Events like this one organised (by the World Bank) in Mexico turn out to be completely insufficient as a means of legitimate consultation given that...the participants are selected without the knowledge or consent of indigenous peoples (and)...the process lacks information mechanisms and prior discussions, which means this event does not guarantee that the participants are in a condition to make critical and correctly informed contributions"* (letter to James Wolfensohn from indigenous participants in Huejutla, Mexico, 24/11/01)<sup>18</sup>

15. Following the closure of the public consultations on Draft OP/BP4.10 in February 2002, indigenous peoples' organisations and support NGOs share a widespread feeling of frustration with the whole policy revision process. They feel that they have so far been denied the opportunity to significantly shape the outcome of the policy revision and that the Bank has largely disregarded their principal concerns and their

recommendations on how to improve the existing policy. They point out that instead of acting on indigenous priorities, the revisions to the policy have mainly addressed the concerns of governments and proposals made by Bank staff.<sup>19</sup> The Bank's own guidelines on public consultation acknowledge that such a feeling of alienation is likely to emerge where people judge that their time and energy have not influenced a process:

*“With public participation, the main lesson learned is that the meaningfulness of the exercise is proportional to the scope for influencing decisions which may affect participants...People may feel alienated and deceived if important decisions have already been made before consultation is initiated...”*<sup>20</sup>

*Unacceptable plans for finalising the policy:*

16. Since 1995 indigenous peoples' organisations have repeatedly called on the World Bank to ensure that any revision of its Indigenous Peoples Policy is informed by a thorough participatory implementation review of the existing policy (OD4.20). In April 2001, the Bank finally launched an implementation review of OD4.20. The review will be carried out in two phases by its Operations Evaluation Department (OED) and is scheduled for completion in mid-2003. In the second round of public consultations held in 2001/02, indigenous peoples' organisations and NGOs welcomed the OED implementation review, but questioned the Bank's flawed plans to finalise the policy in 2002 before its full findings become available. The Bank did acknowledge in July 2002 that the field-based OED implementation review should inform the policy revision, but has so far refused to delay the revision process until the final OED report is completed (see below). Critics point out that the Bank's reluctance to fully re-schedule the revision process does not square with its own justifications for carrying out revision and conversion of its safeguard policies - made on its web pages:

By taking into account important clarifications provided by Management as well as the recommendations of Operations Evaluation Department (OED) evaluations and other important lessons from implementation, the converted policies promise to make a bigger difference on the ground.<sup>21</sup>

*Outstanding concerns:*

17. In March 2002, 48 indigenous peoples' organisations and support NGOs from Central and South America reiterated their concerns about the whole revision process in a letter to the President of the World Bank while attending an Organisation of American States (OAS) meeting of the Working Group on the American Declaration on the Rights of Indigenous Peoples.<sup>22</sup> In response to the letter, World Bank Vice-President Ian Johnson invited indigenous leaders to a face-to-face meeting in Washington D.C. At that meeting in July 2002, six indigenous representatives who attended the discussion again underlined the concerns expressed in their joint letter.

18. They stressed that after six years of lengthy policy revision, many of the fundamental concerns of indigenous peoples about the process have not been addressed by the Bank i.e.

- Draft OP/BP4.10 is missing key safeguards (protection from forcible relocation, ownership rights over lands and resources) that are of fundamental importance to indigenous peoples; these safeguards are so fundamental that their absence undermines the safeguard value of the policy as a whole;
- Draft OP/BP4.10 is not consistent with recognised international human rights of indigenous peoples, and is especially lacking as regards land and resource rights;
- With these deficiencies, Draft OP/BP4.10 fails to comply with the Bank's obligations under international law and does nothing to ensure that borrowers do not violate their own obligations under international human rights instruments;<sup>23</sup>
- By failing to adequately address the issue of property and other rights, Draft OP/BP4.10 is at odds with the World Bank's professed mandate for effective poverty reduction and its mission to promote good governance and rule of law in developing countries;<sup>24</sup>
- Plans to finalise the contents of Draft OP/BP4.10 before the OED implementation review of OD4.20 is fully completed means that the policy revision will fail to benefit from practical lessons drawn from the experience of indigenous peoples who have been affected by World Bank projects and programmes.<sup>25</sup>

19. Indigenous participants in the meeting again called on the World Bank to address all these unresolved

concerns about Draft OP/BP4.10 in a collaborative way with indigenous peoples themselves.<sup>26</sup>

*Roundtable Discussion on Draft OP4.10: October 2002*

20. In response to these concerns and recommendations, the World Bank accepted the invitation made by the indigenous participants to co-organise and jointly host a Roundtable with indigenous peoples' representatives to discuss their multiple concerns in more depth. This dialogue is due to go ahead on 17-18 October 2002.

21. In a letter to indigenous leaders after the meeting, the World Bank also acknowledged the merits of informing the final policy revision with the second phase of the OED implementation review of OD4.20 (though the Bank has so far only committed to considering the finding of an early draft of the final OED report).<sup>27</sup>

22. Indigenous peoples have welcomed this response and have asked the World Bank to delay the revision process still further to await the full OED implementation review report and ensure a thorough public discussion on its contents.<sup>28</sup> Indigenous peoples' representatives are also heartened by the Bank's willingness to participate in the Roundtable, which they hope will be a useful first step to ensuring that the final operational policy is fully informed by Indigenous peoples' views, is responsive to their concerns and priorities and recognises and protects their human rights.

Time will tell how successful this initiative has been when the Roundtable goes ahead - and when the final contents of the revised draft Indigenous Peoples Policy is viewed afterwards by indigenous peoples and the international community.

**ANNEX A: A preliminary comparison of provisions of the existing Indigenous Peoples Policy OD4.20 (1991) and Draft Indigenous Peoples Policy (OP4.10) (March 23, 2001) by the Forest Peoples Programme, 2001**

OD4.20 (general style of requirements is mandatory)			Draft OP4.10 (Retains mandatory style in Part I not II)-*indicates binding language			IP Recommendations	
Requirements by Project Stage	Para.	new status <sup>29</sup>	Objectives and Responsibilities	ref.	4.10/para	(response to Approach Paper 1998)	
<b>1. IDENTIFICATION</b>		(paragraph)	<b>1. IDENTIFICATION</b>		no	i) Right to self-identification	
• Borrower informed about OD4.20	16,20	in >BP:2	• “Early” screening by Task Teams (TT). If IPs/issues identified - OP4.10 is discussed with Borrower*	BP:2 OP:7	no	ii) Strengthened land & resource sec.	
• Undertake detailed baseline studies	16	depends (if SA)	• Borrower and Bank agree where policy applies. Field baseline studies only if an SA is required (see 2. below)	OP:8 BP:4,5	no	iii) No involuntary resettlement	
• Integrate with “safeguard policies”	10	not all	• No direct reference to OP.12: resettlement issues <sup>30</sup>	-	no/partial	iv) Recognition of customary rights	
• Evaluate legal status of IPs	16	indirectly/ optional	• Done at country level in the CAS and ESW. For specific projects it is done during appraisal (not identification) <sup>31</sup>	BP:14 OP:20a	yes (OP:13a)	v) Extend definition of indigenous lands to include lands of spiritual and cultural significance	
• Address IP issues in CAS + ESW	10, 11	in > BP:14	• Screen sector loans, but NOT SAPS ( OP4.10: fn.2) • Sector loans require an IP Strategy ∞ OP4.10*	BP:14 OP:11			
• Present IP issues in the IEPS	16	in > BP:3	• Project Concept Document (PCD) and PID recognise IP issues. Safeguard units comment on PCD and PID.	BP:3			
<b>2. PREPARATION</b>			<b>2. PREPARATION</b>		no	vi) Environmental audit in baseline studies	
• Establish participation mechanism	8,17	in+ > OP:7b,7c and OP:14,15	• Borrower initiates consultation “early in the project cycle” and keeps a “record of the consultation process”*. But, confuses participation and consultation (OP vs BP)	BP:4 OP:7 OP:14			
• “Special action” by the borrower to safeguard IP rights to land etc.	2,9,17  15c.	lost	• Borrower and Bank only “take into account” the results of the consultation when deciding whether to proceed.	BP:4  OP:9	partial OP: 16, 21	vii) IPR in NRM projects and PIC regarding use of TEK etc.	

• Bank assistance to borrower for legal recognition of IP rights	17	<b>optional</b> > OP:20(e)	• “Where a project may entail -ve impacts” a Social Assessment is <b>required*</b> = responsibility of Borrower	BP:5	no	viii) Right to prior, free and informed consent (self-determination)
• Bank assistance for capacity building for implementing agents	17	<b>optional</b> > OP 20(d)	• SA “gathers” info. including “customary rights and claims of indigenous groups”. Bank reviews and comments on SA where there is one.	BP:5	yes/no (OP:7) versus OP:14	ix) Effective participation throughout the project cycle
• An Indigenous Peoples Development Plan (IPDP) or “Project Component” to mitigate negative impacts and share project benefits	14, 15	<b>depends:</b> if -ve impacts envisaged. if not, no plan. >BP:6	• Where the SA “indicates” -ve impacts, the Borrower “prepares a DRAFT indigenous Peoples Plan (IPP)” as <b>a condition of project appraisal*</b> • IPP “level of detail” varies ∞ to each project • Borrower shares draft IPP with affected IPs/public	BP: 6,7 BP:7  OP:10 BP:10	partial (OP:9a)  no	x) Consultation with traditional leaders  xi) Involvement in negotiations between the WB and the client
• IPDP plan for health, education, training and legal assistance	15e 15f	not specified	• Where IPs are beneficiaries, “special measures” to take account of their needs are made in project design. [NO strategy or component mentioned]	BP:6  OP:10b	no	xii) IPO tracking of WB operations at regional and national level
• An IPDP implementation plan	15g, i	lost			yes > OP:9,14 No No	xiii) Proactive information disclosure xiv) Clarify role of NGOs xv) Agreement on “fair” mitigation
• A long lead-time for IPDP prep.	14g	lost	• In Protected Areas projects, Borrower “introduces a <i>process</i> ... “acceptable to the Bank”. No explicit requirements for an IP component etc.	OP:15		
• The IPDP should contain a legal assessment of the status of the groups covered by the OD.	15a	lost	• Borrower gives “particular attention” to IP rights to land and resources in project design.	OP:12 OP:13	not clear? partial: OP9a	xvi) Involvement in M&E xvii) More concern with gender
• The Bank should work with the Borrower to “clarify the steps needed for putting land tenure on a regular footing as early as possible”	17	lost	• Consideration is given to establishing “legal recognition to customary or traditional land tenure systems”... “taking into account the Borrower’s legislation”	OP:13	No  partial :13a partial: OP18	xviii) Agreement on fair mitigation  ixx) Respect for cosmovision xx) Direct funding
<b>3. APPRAISAL</b>			<b>3. APPRAISAL</b>			
• assess the adequacy of the IPDP	18	<b>in</b> >BP:9	• IPP reviewed by Regional Safeguard Unit and LEG reviews its legal aspects.	BP:7		
• refuse appraisal until suitable IPDP plans have been submitted by the borrower	9	<b>weakened</b> > BP:9, OP:9 No mention of refusal.	• Key elements of IPP included in PAD • Bank reviews Borrower plans to ensure consistency with OP4.10.	BP:7 BP:7 OP:9		
• confirm that IPs have participated	18	<b>in</b> > BP:9	• appraisal assesses adequacy of consultation	BP:9		

<b>4. NEGOTIATION + CONTRACT</b>			<b>4. NEGOTIATION + CONTRACT</b>				
<ul style="list-style-type: none"> <li>commitment to IP policy and IPDP</li> <li>legal commitments with clear benchmarks that can be monitored</li> </ul>	20	<b>in</b> > BP:10	“IPP or other required measures are confirmed at negotiations...legal agreements (obligate) the Borrower to carry out the IPP/measures”	BP:10			
	20	<b>indirectly</b>					
<b>5. IMPLEMENTATION</b>			<b>5. IMPLEMENTATION</b>				
<ul style="list-style-type: none"> <li>Ensure IPs suffer no adverse effects</li> <li>Ensure IPs receive benefits</li> <li>make supervision missions</li> <li>recommend “corrective actions”</li> <li>Undertake M+E &amp; publish results</li> <li>A long follow-up for IPDP</li> </ul>	6	<b>in</b> OP:1/BP:12	<ul style="list-style-type: none"> <li>Regional Vice President ensures availability of resources for “close and frequent supervision”</li> <li>Task team ascertains whether legal covenants are being fulfilled</li> <li>If the IPP objectives have not been realized...“continued supervision” post ICR may be possible</li> </ul>	BP:11			
	6	<b>in</b> OP:7/BP:12		BP:12			
	19	<b>in</b> BP:11,12					
	19	lost					
	15h,19	changed			BP:13		
	14g	<b>indirect</b> BP:13					
<b>6. CLOSURE: Produce ICR</b>		<b>in</b> (BP:13)					
<b>Total elements</b>	<b>28</b>	<b>16</b>				<b>6.5</b>	<b>20</b>

**Annex B:****Evaluation of 2001-2002 World Bank public consultations on its draft revised Operational Policy on Indigenous Peoples (OP/BP4.10)**

Criteria for effective consultation <sup>a</sup>	Assessment and comments <sup>b</sup>
<b>PREPARATION</b>	
- review lessons from past consultations	There was no public assessment of the quality of the first round of public consultations on the IP policy revision (98-99).
- identify relevant stakeholders: ensure appropriate venue and meeting dates	Independent indigenous representatives reportedly made up just 10% or less of the participants in consultations, except in those that took place at indigenous gatherings, such as the Russian Indigenous Federation. Requests for more representative consultations have been denied or ignored. When indigenous people in India noted the extension in the consultation period, they requested another consultation with more indigenous participation. In response, the Bank simply offered an insignificant amount of money for them to organise a meeting themselves.
- develop a participatory consultation strategy	The 'consultation strategy' that was released gave no benchmarks for measuring the relative success of each meeting, and referred to no effectiveness criteria.
- publish advance schedule for consultation	The schedule that was finally posted gave no specific information, participant lists were withheld, and the schedule changed a number of times. Schedules were only made public once the consultations had already begun. The last consultations (Africa) were announced only a few weeks in advance.
- disseminate all relevant information well in advance of the public meeting (30 days)	In many cases, participants saw the information for the first time upon arrival at the consultation meeting. In other cases, they were given the draft policy a week or two in advance, with no supporting explanatory materials with which to analyse it.
<b>HOLDING THE CONSULTATION</b>	
- select impartial chairperson(s) with facilitation skills to manage opposing interests and "solicit views and transmit them frankly"	Reports indicate that chairpersons were chosen randomly, and facilitators were not prepared. In Peru (October 22/01) the facilitator said to indigenous participants "Don't get so upset about this, it is only a policy."
- establish atmosphere of openness and trust among participants	Because in most of the consultations participants were mixed government, World Bank and indigenous representatives there was not an atmosphere of complete openness. This could have been remedied by holding separate meetings for indigenous people to discuss their views independently (as was done in the Philippines).
- provide clear, non-technical information in the local language	To date there is no clear, non-technical information from the World Bank providing an explanatory framework for the policy conversion process or the proposed changes.
- Ensure all participants have an opportunity to express their views (levelling techniques). - Accommodate questions and clarifications as	The majority of the consultations were one and a half days or less, with limited time for question and answer sessions. Participants were unclear as to how their input was going to be taken into account, limiting their willingness to contribute. See

well as objections.	complaints in reports from Philippines, Peru, Delhi and Russia.
<b>FOLLOW-UP</b>	
- ensure issues raised by participants are actively followed-up	As far as we are aware, there has been no clear follow-up to the consultation meetings held in 2001/02 to address issues raised.
- report back to stakeholders how plans will be modified in the light of their comments and recommendations	A WB summary of the consultation process was posted in English on their website two months after the end of the consultations (April 18, 02). It summarises comments, but does not answer important questions nor suggest what changes in the revision might be expected as a result of the consultations. Rejection of the consultations by several participants is not recorded.
- provide stakeholders with an opportunity to review revised draft documents	According to the WB 'summary,' participants will see the final documents only after the Board of Directors approves them.
- enable participants' recommendations to be incorporated into final documents	Bank staff said that 'controversial' issues such as prior informed consent and land rights will be noted separately to the Bank's Board, but not incorporated into the revision.

<sup>a</sup> **Sources:** (i) Annex 7-1: "Public consultation in the Environmental Assessment Process" pp-208-211 in World Bank (1991) *Environmental Assessment Sourcebook: Volume I - policies, procedures, and cross-sectoral issues* World Bank Technical Paper Number 139, World Bank, Washington, DC (ii) *The World Bank Participation Sourcebook* February 1996, <http://www.worldbank.org/wbi/sourcebook/sb0002.htm> (iii) Davis, SH and Soeftestad, L T (1995) *Participation and Indigenous Peoples* Social Development Paper No. 9, June 1995, ESSD, World Bank Washington D.C. at pages 13-15 (iv) Guidance Note 3: "Planning for Public Consultation and Disclosure" and Guidance Note 6: "Consultation and Disclosure on EA Report" in IFC (1998) *Doing better business through effective public consultation and disclosure: a good practice manual* IFC, Washington, D.C.

<sup>b</sup> **Sources:**

- Tebtebba Foundation (2001) *Report on the Stakeholders consultation on the World Bank's draft policy on Indigenous Peoples (OP/BP4.10)*, 22 October 2001
- Selverston-Scher, M (2001) *World Bank consultation on the revision of the IP policy (OP4.10) - "Andean Region"*, 22-23 October 2001, Cuzco, Peru BIC, Washington, DC
- ISA (2001) *Consulta sobre a nova política do Banco Mundial para os povos indígenas* Internal ISA report;
- CONAIE and CONIVE (2001) *Declaración de la Confederación de Nacionalidades Indígenas del Ecuador y el Consejo Nacional Indio de Venezuela en el marco de la consulta regional andina sobre población indígena del Banco Mundial* 23 de octubre de 2001;
- CORE (2001) *Statement of Core (Indigenous Peoples' Advocacy and Resource Centre for India's North East) external stakeholders consultation on the World Bank's Draft Policy on Indigenous Peoples (OP/BP4.10)*, New Delhi, India, 26 November 2001
- Sulyandziga, R (2001) *Discussion on OP4.10 of the World Bank Concerning Indigenous Peoples: information about consultations held in Khabarovsk, Moscow and Nar'yan Mar, October 2001* Russian Indigenous Peoples of the North Training Centre
- Bangladesh Adivasi Forum, Hill Tracts NGO Forum (2001) *Statement of Indigenous participants at the consultation on the World Bank's draft policy on Indigenous Peoples (OP/BP4.10)* Dhaka, 14 November 2001
- Transparencia (2002) *Modificación de la política del Banco Mundial hacia los Pueblos Indígenas: conversión de la DO4.20 a la PO/PB4.10* report on consultations held in La Trinidad, Tlaxcala, Mexico, 4-5 December 2001
- Burman, R -B.K. (2001) *World Bank policy guideline in respect of indigenous peoples and process of revision of same* Comments and consultation report, unpublished memo, circulated by Email December 2001
- Selverston-Scher, M (2002) Letter to Navin Rai, ESSD, dated May 13, 2002 expressing concerns about the World Bank's flawed consultations on the revision of its Indigenous Peoples Policy at page 2 (point 6.).

---

<sup>1</sup> OD4.20 on Indigenous Peoples is available on line at:

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

<sup>2</sup> OD 4.20 paragraphs 14 and 15.

<sup>3</sup> IWGIA Yearbook 1990.

<sup>4</sup> The summary list of recommendations in this briefing is not exhaustive. For World Bank records of these consultations, see

<http://lnweb18.worldbank.org/essd/essd.nsf/28354584d9d97c29852567cc00780e2a/5e23e566bed37cd6852567cc0077f48d?OpenDocument>

<sup>5</sup> See World Bank (2002) *Summary of Consultations with External Stakeholders regarding the World Bank Draft Indigenous Peoples Policy (OP/BP 4.10)* - last updated 8 July 2002

[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)

<sup>6</sup> The provision on sacred lands and lands of religious significance in paragraph 13(a) of Draft OP4.10 should be read in conjunction with the World Bank's mandatory safeguard policy on Natural Habitats (OP 4.04) paragraph 4, which states that "The Bank does not support projects that, in the Bank's opinion, involve significant conversion or degradation of critical natural habitats". Critical natural habitats include areas "recognized and protected by traditional local communities (e.g., sacred groves)" [see OP4.04 Annex A. paragraph 1(b)(i)].

<sup>7</sup> World Bank (2002) *The World Bank and Indigenous Peoples* – document circulated to indigenous representatives at a meeting with Ian Johnson on 10 July 2002 and distributed at a side event at the UN Working Group on Indigenous Populations in Geneva in July 2002.

<sup>8</sup> For detailed comparisons of between the Draft OP4.10 and OD4.20, see Asian Indigenous and Tribal Peoples Network – AITPN (2002) *The World Bank Defaults on Past Promises: why the World Bank's draft policy on Indigenous Peoples should be rejected* AITPN, New Delhi at pages 27-51. See also Centro de Derechos Económicos y Culturales – CDES (2001) *Análisis de Centro de Derechos Económicos y Culturales – CDES – del Borrador de la Política Operacional 4.10 sobre Pueblos Indígenas*, circulated by Email, 17 May 2001. See especially, MacKay, F (2002) "Universal Rights or a Universe Unto Itself? Indigenous peoples' human rights and the World Bank's draft OP4.10 on Indigenous Peoples" *American University International Law Review* 17(3):527-624 at pages 606-612.

<sup>9</sup> One prime example of the gap between draft OP/BP4.10 and international standards is its failure to require governments to take action to secure indigenous land rights. Requirements for states to take special measures to protect indigenous ownership and control of historically occupied lands is enshrined under Articles 1(4) and 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD); Articles 1 and 27 of the International Covenant on Civil and Political Rights; Article 30 of the Convention on the Rights of the Child; Article 11 of ILO Convention 107; Articles 13, 14 and 15 of ILO Convention 169 and various articles under the American Convention on Human Rights. For detailed treatment and analysis of these issues, see MacKay, F (2001) *Universal Rights or a Universe Unto Itself? Indigenous peoples' human rights and the World Bank's draft OP4.10 on Indigenous Peoples* FPP Discussion Paper, November 2001 and Colchester, M (2001) *Forest Industries, Indigenous Peoples and Human Rights* FPP Thematic Paper, December 2001. See also Survival International, letter to World Bank, July 2001. These documents are available at <http://www.forestpeoples.org>.

<sup>10</sup> - Tebtebba Foundation (2001a) *Report on the Stakeholders consultation on the World Bank's draft policy on Indigenous Peoples (OP/BP4.10)*, 22 October 2001

- Tebtebba Foundation (2001b) *Statement of the TEBTEBBA Foundation ((Indigenous Peoples' International Centre for Policy Research and Education) and the Cordillera Peoples' Alliance on the Stakeholder's Consultation on the World Bank's Draft Policy on Indigenous Peoples (OP/BP4.10)*;

- Transparencia (2001) *Mesa de trabajo sobre derechos indígenas: revisión de la políticas 4.20 y 4.10 del Banco Mundial* Oaxaca, agosto de 200

- Selverston-Scher, M (2001) *World Bank consultation on the revision of the IP policy (OP4.10)* - "Andean Region", 22-23 October 2001, Cuzco, Peru BIC, Washington, DC

- Sulyandziga, R (2001) *Discussion on OP4.10 of the World Bank Concerning Indigenous Peoples: information*

about consultations held in Khabarovsk, Moscow and Nar'yan Mar, October 2001 Russian Indigenous Peoples of the North Training Centre;

- CONAIE and CONIVE (2001) *Declaración de la Confederación de Nacionalidades Indígenas del Ecuador y el Consejo Nacional Indio de Venezuela en el marco de la consulta regional andina sobre población indígena del Banco Mundial* 23 de octubre de 2001

- CORE (2001) *Statement of Core (Indigenous Peoples' Advocacy and Resource Centre for India's North East) external stakeholders consultation on the World Bank's Draft Policy on Indigenous Peoples (OP/BP4.10), New Delhi, India, 26 November 2001.*

- *Declaración de los pueblos indígenas participantes en la 19 Sesión del Grupo de Trabajo sobre Poblaciones Indígenas de las Naciones Unidas sobre las preocupaciones acerca de las políticas del Banco Mundial* Ginebra, Julio de 2001.

- Center for Economic and Social Rights (CDES)(2001) Letter sent to World Bank signed by 140 indigenous peoples' organisations, NGOs and individuals, 14 December 2001

<sup>11</sup> For example, a detailed letter sent to the Bank by the Centre for Economic and Cultural Rights (CDES) of Ecuador, which questions the consultation process and contents of Draft OP4.10 (endorsed by 146 Indigenous peoples' organisations, NGOs and individuals from 35 countries (23 Southern, 12 Northern)), received a one page reply from the Bank. In its reply, the Bank simply thanks CDES for its interest in the matter and notes that similar concerns have been raised by other stakeholders and had been noted by the Bank. See also Selverston-Scher, M (2002) Letter to Navin Rai, ESSD, dated May 13, 2002 expressing concerns about the World Bank's flawed consultations on the revision of its Indigenous Peoples Policy at page 2 (point 6.).

<sup>12</sup> In Manila, a one-day meeting was held in October 2001 in which half the day was taken up by Bank presentations which left insufficient time for reasoned discussion - see Tebtebba Foundation (2001) *Report on the Stakeholders consultation on the World Bank's draft policy on Indigenous Peoples (OP/BP4.10), 22 October 2001.* See also Selverston-Scher, M (2002) Letter to Navin Rai, ESSD, dated May 13, 2002 expressing concerns about the World Bank's flawed consultations on the revision of its Indigenous Peoples Policy at page 2 (point 4.).

<sup>13</sup> For example, in India, background documentation was only distributed on the morning before the meeting held in New Delhi on 22 November 2001 (Melina Selverston-Scher, BIC, pers.comm). In the case of the meeting in Chapada dos Guimarães in Brazil, participants were astonished to hear from Bank staff that the lack of prior documentation was due to a shortage of funds for the consultation - ISA (2001) *Consulta sobre a nova política do Banco Mundial para os povos indígenas* Internal ISA report.

<sup>14</sup> In the Bank's consultation meeting in Cuzco, adequate Spanish-English translation for key Bank staff was lacking and had to be provided in an *ad hoc* manner by NGO participants. In the same meeting, indigenous speakers were repeatedly cut off by one co-moderator, who also astonished participants when he advised them not to take the Bank's Indigenous Peoples Policy too seriously - see Selverston-Scher, M (2001) *World Bank consultation on the revision of the IP policy (OP4.10) - "Andean Region", 22-23 October 2001, Cuzco, Peru* BIC, Washington, DC. Lack of complete prior documentation and deficient orientation and background documents were also reported in the consultations held in India - see Burman, R - B.K. (2001) *World Bank policy guideline in respect of indigenous peoples and process of revision of same* Comments and consultation report, unpublished memo, circulated by Email December 2001 at pages 3, 4 (para.6), 5 (para 7).

<sup>15</sup> According to one report, only seven indigenous participants were present at the consultation meeting held in Brazil on 8 and 9 November 2001- *ISA (2001) Consulta sobre a nova política do Banco Mundial para os povos indígenas* Internal ISA report. In India, just a few indigenous representatives took part in the meeting in New Delhi that hosted a total of 35 participants that included representatives from government agencies, NGOs and academic institutions. In South America, representatives of the 3.9 million Aymara and Quechua peoples from the highlands of Bolivia complained that they were not invited to the Bank's consultation meeting in Cuzco (Email letter from Mabel Miranda to World Bank, dated 21 October 2001). See also Letter to Eliane Karp de Toledo, First Lady of Peru from Jaime Huanca Quispe of the *Organización de Comunidades Aymaras, Amazonenses y Quechuas (OBAAQ)* 17 October 2001 protesting at being turned away by World Bank staff in its Lima office after requesting documentation and details regarding the World Bank consultation meeting held in Cusco on 22-23 October 2001.

<sup>16</sup> Joint Statement by indigenous representatives present at the external stakeholders' consultation on the World Bank's revised Draft Policy on Indigenous Peoples. Signed by D Roy Laifungbam (CORE) and Jarjum Ete (APWWS and IWRC), New Delhi, 26 November 2001.

---

<sup>17</sup> Joint Statement signed by Blanca Chancoso (CONAIE) and José Gregorio Diaz and María Andarcia (CONIVE) in the City of Cuzco, 23 October 2001.

<sup>18</sup> See <http://www.bicusa.org/policy/IndigenousPeoples/mexico.htm>

<sup>19</sup> See, for example, letter to President James Wolfensohn signed by 50 indigenous leaders and support NGOs from Central, South and North America, dated 15 March, 2002.

<sup>20</sup> Annex 7-1: "Public consultation in the Environmental Assessment Process" pp-208-211 in World Bank (1991) *Environmental Assessment Sourcebook: Volume I - policies, procedures, and cross-sectoral issues* World Bank Technical Paper Number 139, World Bank, Washington, DC

<sup>21</sup> <http://lnweb18.worldbank.org/essd/essd.nsf/All/DD32018285A36DAE85256A2B00670EB5>

<sup>22</sup> Letter to James Wolfensohn from indigenous leaders and NGOs attending the OAS meeting on the Inter-American Declaration on the Rights of Indigenous Peoples, 15 march 2002.

<sup>23</sup> MacKay, F (2002) "*Universal Rights or a Universe Unto Itself? Indigenous peoples' human rights and the World Bank's draft OP4.10 on Indigenous Peoples*" *American University International Law Review* 17(3):527-624

<sup>24</sup> See FPP (2002) *Poverty Alleviation, Property Rights and the World Bank's Draft Operational Policy 4.10 on Indigenous Peoples* FPP briefing, June 2002

<sup>25</sup> Statement of Indigenous Peoples' spokesperson in a meeting between indigenous peoples' leaders and representatives and the World Bank, 10<sup>th</sup> July 2002 (Draft Document read in the meeting by Suhas Chakma).

<sup>26</sup> Letter to James Wolfensohn from indigenous leaders and NGOs attending the OAS meeting on the Inter-American Declaration on the Rights of Indigenous Peoples, 15 march 2002.

<sup>27</sup> Letters to Hector Huertas, Lourdes Tiban, José Carlos Morales, Paulo Pankararu, Arlen Ribeira and Suhas Chakma dated 16 and 17 July 2002 from Ian Johnson, Vice President, Environmentally and Socially Sustainable Development Department (ESSD), World Bank, Washington, D.C.

<sup>28</sup> Letter to Ian Johnson dated 1 August 2002 from Hector Huertas, Lourdes Tiban, José Carlos Morales, Paulo Pankararu, Arlen Ribeira and Suhas Chakma.

<sup>29</sup> In the scoring of specific elements in the matrix: "in" and "yes" score "1". "Partial", "indirect" and "depends" score "0.5". These indices are only included as a rough *guide* to policy content and provisions. The indices do not measure policy quality along a measurable/cuantitative scale.

<sup>30</sup> Footnote 6 to OP4.10 para. 10a does note that the IPPs "may be prepared with **resettlement** plans or similar instruments".

<sup>31</sup> The wording in paragraph 9 indicates that Bank appraisal teams will review "the enabling legal and policy framework for implementation" of an Indigenous Peoples Plan or measures outlined in "project documents". The new draft OP4.10 does not require this during project identification as in OD4.20 (para.16). The emphasis is on addressing these issues upstream in CAS and ESW dialogue with Borrowers - or in cases where it is specifically requested by the Borrower (OP4.10:20a)