



**Forest Peoples
Programme**

Indigenous Peoples and the World Bank: experiences with participation



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Cover photograph: Bagyeli and Bantu traditional leaders meet in April 2005 in the Bipindi-Kribi region of south-west Cameroon to discuss land rights issues and problems with the implementation of the World Bank-financed Chad-Cameroon Pipeline Project, which crosses Bagyeli and local community lands. Initial public consultations about the project, held before 2000, failed to properly involve Bagyeli. As a result, they were marginalised in the design of the compensation programme and in the Indigenous Peoples Plan (IPP) now being implemented through the Foundation for Environment and Development in Cameroon (FEDEC). Local communities and support NGOs Planet Survey, the Centre for Environment and Development and Forest Peoples Project have developed a collaborative forum, including participation by government and FEDEC, to enable Bagyeli to secure their rights to land as well as their role in the planning and implementation of the IPP. Photo: Planet Survey

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I Introduction and background

This paper summarises some of the experiences of indigenous peoples with participation in World Bank policy processes and World Bank projects and programmes. The summary is based on a review of existing literature and documentation as well as various published statements and briefings of indigenous peoples' organisations and support NGOs.¹ The paper commences with a historical sketch of World Bank interactions with indigenous peoples before assessing the quality of participation in various standard-setting and sector-review processes. The paper goes on to examine briefly various and ongoing problems with the implementation of World Bank participation rules in its projects and programmes. A short review of experiences with World Bank accountability mechanisms is then undertaken.

The paper finds that indigenous peoples' experiences of participation in World Bank policy processes have often not been favourable. World Bank policy processes have failed to address demands that indigenous peoples have made for the last 15 years e.g., in relation to human rights and free, prior and informed consent (FPIC). Recent independent sector reviews sponsored by the Bank have enabled more effective participation, but the Bank has failed to act on their progressive recommendations - creating disillusion among indigenous peoples who engaged with these processes. Meaningful indigenous participation remains absent or superficial in the Bank's adjustment and programmatic loans that now form a growing part of its portfolio. At the project and programme level, the assessment confirms that participation is often low grade and so many projects are still experienced as top-down interventions. The paper sets out a series of recommendations calling on the World Bank to undertake major reform and adopt a rights-based approach to participation and development.

Who are Indigenous Peoples?

Though there is no agreed international definition, it is now increasingly accepted that indigenous peoples are a self-identified category of peoples in the Americas, Africa, Europe, Asia and the Pacific. These peoples define themselves as "indigenous" and as distinct from dominant national societies. The principle of self-identification is established in ILO Convention 169 and has been consolidated in the formal decisions and recommendations of UN human rights bodies.² The same principle has been strongly endorsed by indigenous peoples themselves and has been adopted in Article 8 of the United Nation's Draft Declaration on the Rights of Indigenous Peoples.³ For its part, the World Bank applies a broad approach to defining indigenous peoples that recognises that "indigenous peoples" may encompass a diversity of human societies that exist in a variety of historical, national and local situations. The Bank's existing policy on Indigenous peoples, known as Operational Policy 4.10, states that for the purposes of Bank operations, the term "Indigenous Peoples" refers to a "*distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:*"

- self-identification and identification by others as members of a distinct indigenous cultural group
- collective attachment to ancestral territories and to natural resources in these areas
- presence of customary social and political institutions
- an indigenous language, often different from the national language⁴

Relations between the World Bank and Indigenous Peoples

Historical relations between indigenous peoples and the World Bank have often been tense and marked by a lack of trust. The difficult relations and absence of trust that continue until today stem partly from the serious negative social and cultural impacts inflicted on indigenous communities by past World Bank-financed infrastructure, extractive and industrial projects. These large-scale and destructive Bank projects were widespread in the 1960s, 1970s and 1980s, and resulted in severe adverse impacts on indigenous peoples in Latin America, Asia and Africa. Since the 1980s, deep indigenous resentment of the World Bank has also stemmed from its imposition of unwanted austerity and adjustment measures that have generated poverty and increased commercial pressures on indigenous territories.⁵ Most of these World Bank loans did not involve any participation of indigenous peoples in the preparation, design and implementation of projects. If any degree of participation was involved, it was usually low grade superficial or passive participation during project implementation.⁶ Bank projects were consequently experienced by indigenous peoples as government-backed, top-down and imposed development interventions.

For example, in the 1960s and 70s the World Bank provided a loan to the Panamanian government for the construction of the Bayano dam, which displaced Kuna families to marginal lands without adequate compensation for loss of their fields, crops and forests.⁷ In Guatemala, in the early 1980s the World Bank financed the infamous Chixoy dam which involved large-scale forced relocation that was subsequently implicated in the government massacre of 369 displaced people.⁸ In Brazil, World Bank support for Amazonian development schemes led to land invasions and high mortalities among affected indigenous peoples from introduced diseases.⁹ In Central India the World Bank had supported the establishment of huge timber plantations on tribal lands with shattering effects on the displaced Muria people. In the Philippines, the World Bank had offered to support the construction of the Chico Dams, which would have flooded some 80,000 Kalinga and Bontoc people off their lands. Tribal mobilisation against the dams triggered repression and insurgency.¹⁰

Early World Bank Policy on Indigenous Peoples

In response to severe international criticism of the destructive impacts of its projects, the World Bank adopted its first policy on “tribal” peoples in 1982.¹¹ 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, and cultural integrity and ensure their participation in project planning and implementation. This groundbreaking policy affirmed for the first time that the World Bank should actually set social and environmental rules and standards for its lending. However, due to a lack of social science staff and a failure to mainstream the policy into its operations, the policy did little to reform Bank practice¹² and indigenous peoples rarely enjoyed any level of participation in Bank projects, which they still experienced as top-down interventions. Bank projects therefore continued to have serious negative impacts on indigenous peoples throughout the 1980s.¹³

II Experiences with participation

The first part of this main section of the review paper will examine experiences with World Bank policy processes, consultations and sector reviews. The final section of part II will briefly review experiences at the project and programme level.

A World Bank policy and review processes

Indigenous peoples past and present experiences with Bank policy processes have more often than not been unfavourable and reveal a series of problems that have impeded effective and informed participation. Experiences of indigenous peoples in engaging with sector reviews have been variable. However, even in the few cases where review processes have proved useful, indigenous peoples have been bitterly disappointed with follow-up processes in which the Bank has failed to act on official recommendations relating to indigenous peoples (see below).

World Bank Indigenous Peoples Policy and its Revisions

The first World Bank policy on “tribal” peoples was elaborated internally by Bank staff in 1980-82 without any participation by indigenous peoples. Real engagement between the Bank and indigenous peoples on policy and accountability issues first occurred in 1987, at a time when the then new World Bank President, Barber Conable, had finally admitted that many of World Bank projects had resulted in negative impacts on indigenous peoples and their environment. At a face-to-face meeting co-organised by Survival International and Oxfam-America, three indigenous leaders from Colombia, Peru and Bolivia recommended to the Bank’s president that the Bank undertake major reforms to ensure compliance with its policies. The leaders also called for tri-partite binding agreements between the Bank, the Borrower and affected peoples in all cases where loan operations affected their communities and their territories.

The 1987 meeting did not result in any clear commitments on the part of the Bank. However, in an effort to improve implementation, the World Bank did begin to employ more environmental and social staff in the late 1980s, including some anthropologists with experience of indigenous issues who were set to work at reviewing and updating the Bank’s policy towards indigenous peoples. These specialists began work on the policy internally without a public consultation process.

In 1990, indigenous organisations such as COICA made clear recommendations to the World Bank demanding a policy which included (i) recognition of indigenous rights as set out in international law (ii) *direct consultations with indigenous peoples* in the elaboration of the policy (iii) no development projects in indigenous areas without the informed consent of the peoples affected (iv) participation of the indigenous organisations, which represent the affected peoples, throughout the full project cycle (v) establishment of tripartite commissions, including governments, funders and the affected peoples, to oversee project implementation and (v) prioritisation of indigenous development alternatives.¹⁴

Unfortunately, these calls for direct indigenous participation were disregarded. Policy makers went ahead alone inside the Bank without sharing their drafts and or their thinking. The Bank adopted the revised directive on Indigenous Peoples known as Operational Directive 4.20 (OD4.20) in 1991. Indigenous leaders and support NGOs criticised the World Bank at the time that the new policy was released for not having elaborated it through a participatory process in consultation with indigenous peoples. The FPP, for instance, noted that the policy did not respect the right of indigenous peoples to self-determination, failed to uphold the right to reject unwanted projects, ignored key indigenous demands and contained ambiguous provisions.¹⁵

The International Alliance of Indigenous and Tribal Peoples of the Tropical Forests, which held meetings with the World Bank to discuss the new policy in 1992, also called for a much stronger recognition of indigenous peoples' rights, recognition of the right of free prior and informed consent and the establishment of tripartite oversight mechanisms to carry out accountable and transparent planning, implementation, monitoring and evaluation of the projects.¹⁶

Controversial revision of OD4.20

Since 1994, 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).¹⁷ The first part of the policy revision process was again criticised by indigenous peoples for failing to involve their representative organisations at an early stage.¹⁸ Four years into the process, the first round of public consultations on an "Approach paper" began in 1998. Indigenous organisations submitted written comments and made oral presentations in a series of consultations with indigenous peoples' organisations, governments and NGOs in Brazil, Costa Rica, Ecuador, Vietnam, the Philippines, India and Russia.¹⁹ Each meeting produced a brief report of recommendations which was posted on the Bank's web pages.²⁰

Indigenous inputs to the consultation reiterated many of their earlier demands that any policy: (a) be informed by a participatory review of implementation of the existing policy (b) be fully consistent with international standards on the rights of indigenous peoples (c) specify that securing indigenous land and resource rights be an essential precondition for project appraisal and approval (d) expressly prohibit forced relocation (e) recognise the indigenous right to free prior and informed consent to any developments proposed on their lands and territories and (f) require the involvement of affected indigenous peoples in *negotiations* between the World Bank and the client government regarding loan agreements. Crucially, indigenous peoples repeatedly requested that their key recommendations be incorporated in the revised policy.

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 14 countries. The Bank was proud that it had carried out so many meetings and had consulted over 1000 "stakeholders" in total. However, indigenous peoples who engaged with the process reported negative experiences and complained of serious flaws with the process.

Indigenous criticisms of the Bank 2001–02 consultation process

Indigenous organisations and NGOs asked Bank staff at the outset of the consultation how indigenous peoples' comments would influence the contents of the final draft policy. They were alarmed to learn that the contents of the final policy were "unlikely to change significantly" and that issues of principle rejected in the first round of public consultation in 1998/99 were unlikely to be included in the final draft.²¹ Asked to clarify this issue, the Bank then asserted that no subject was "off the table".²² However, no clear explanation of how external comments would influence the policy was ever provided.²³ Once the Bank's 2001-02 consultation meetings got underway, they were roundly condemned by indigenous peoples 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 (Table 1).²⁴

Participants who took part in the consultations report several fundamental problems with the consultations.

- letters to the Bank's policy revision team received perfunctory responses²⁵
- 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 day²⁶
- most meetings lacked a timely *prior* provision of relevant documentation²⁷
- some meetings suffered from poor moderation and translation facilities²⁸

In several cases indigenous participants issued public statements and wrote letters to the Bank²⁹ condemning the meetings as insufficient and lacking in meaningful and informed participation e.g.,

"... this space for discussion established by the World Bank is not considered by our organisations as a consultation ..." (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)³⁰

"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)³¹

Throughout the 2001/02 consultations, indigenous organisations also expressed their severe disappointment that the revised draft, now known as OP/BP 4.10, did not protect indigenous peoples' in line with internationally agreed standards and had disregarded many of their key recommendations made in the first round of public consultations in 1998.³² 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.³³

In response to the letter, the World Bank invited indigenous leaders to a meeting in Washington DC. At that meeting in July 2002, six indigenous representatives who attended the discussion again underlined the concerns about substance and problems with the consultation process. Indigenous participants in the meeting called on the World Bank to address all these unresolved concerns about Draft OP/BP4.10 in a collaborative way with indigenous peoples themselves.³⁴

Table 1: A critical summary evaluation the World Bank's 2001/02 public consultations on its draft revised Operational Policy on Indigenous Peoples (OP/BP4.10)

World Bank Criteria for effective Public consultation ³⁵	Assessment and comments (based on indigenous peoples' statements and reports of support NGOs)
Preparation	
- 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 some consultations, except in those that took place at indigenous gatherings, such as the Russian Indigenous Federation. 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.
Holding the Consultation	
- 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	There was 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 well as objections.	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 complaints in reports from Philippines, Peru, Delhi and Russia.
Follow-up	
- ensure issues raised by participants are actively followed-up	There was no clear direct 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 did 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 would 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 would be noted separately to the Bank's Board, but not incorporated into the revision.

After intense pressure from indigenous participants in the July 2002 meeting, Bank officials agreed to delay the finalisation of OP/BP4.10 to await the completion of its implementation review of OD4.20 being carried the Operations Evaluation Department (OED).³⁶ After much struggle and after no less than four years, indigenous peoples had persuaded the Bank to accept one if their recommendations.³⁷

At the same time, 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 face-to-face dialogue went ahead in October 2002 in the Bank HQ. During the roundtable discussion which involved 15 indigenous leaders from Africa, Asia and the Americas, one indigenous representative from Ecuador reiterated indigenous concerns and emphasised that what is important is not the number of consultations and participants present, but the quality and credibility of the participation process:

“It is not a question of how many consultation meetings the Bank has carried out. It is a question of whether or not indigenous peoples who took part in those meetings feel that they have enjoyed proper participation and to what extent they consider that their concerns are being addressed in the revised policy”³⁸

At the end of the discussions the indigenous participants again formally rejected the March 2001 draft revised policy. They expressed their appreciation for the meeting as a space to air their concerns and reiterate their demands, which centred on the Bank's obligation to uphold indigenous peoples' rights protected under international law.³⁹ While closing the meeting, Vice-President Ian Johnson made commitments to re-write the OP and explore the feasibility of a more focused legal roundtable with indigenous leaders, Bank lawyers and human rights experts to jointly assess OP 4.10 safeguards against international law.⁴⁰ In the meantime, throughout 2003, indigenous spokespersons continued to press the Bank to address their concerns: at the United Nations Permanent Forum on Indigenous Issues (UNPFII)⁴¹ and through the World Bank's own Extractive Industries Review (EIR) (see below). The final report of the EIR released in December 2003 made specific recommendations in relation to the Bank's revision of its policy on Indigenous Peoples and backed the indigenous call for a legal roundtable. Crucially, the EIR affirmed that, to be considered an effective safeguard, the policy must be acceptable to indigenous peoples themselves.

The EIR report was followed by a whole series of letters from indigenous organisations and support NGOs calling on the Bank to ensure that the final version of OP/BP 4.10 incorporate the recommendations of the EIR report. Despite official statements in the UN and follow-up letters from indigenous leaders, the World Bank delayed any legal roundtable and declined to make any further commitments on the issue. Finally, after more than a year and with very short notice, a member of the Bank's legal team eventually agreed in May 2004 to meet a small number of indigenous leaders on the margins of the UNPFII. To the surprise of the participants, the Bank sought to maintain that this informal meeting constituted the requested legal roundtable. Participants were given just 12 hours to comment on a revised draft of the OP. Indigenous participants put it on the record that they did not accept the meeting as the requested formal legal roundtable and noted that the time given for comments on the new draft was grossly inadequate.⁴²

More process problems at the final stages of policy revision

In December 2004, the Bank team finally released the second draft of the revised OP4.10 for 90 days' public consultation. On examining the draft, indigenous leaders and support NGOs tracking the process were disappointed that the Bank did not incorporate clear language on FPIC, but instead included the retrograde language of Free Prior Informed *Consultation* (FPICon) that emerged from the Bank's weak and regressive response to the EIR report. This

language was included in OP 4.10 even though it had been explicitly rejected by indigenous peoples in July 2004 (see below). At the same time, some potentially useful elements of the draft OP, such as a new mandatory requirement for social assessments, were welcomed. Indigenous leaders stressed that they were unable to properly assess the potential utility of other proposed safeguards, such as “broad community support”, because they were unable to scrutinise the Bank’s draft proposals for binding procedural rules in BP 4.10 that are meant to underpin the general safeguard commitments in the OP.

Unfortunately, to the surprise of indigenous organisations and NGOs and contrary to previous Bank practice, the World Bank did not release the BP with the OP in December 2004. On questioning this radical break from previous policy processes, Bank policy makers advised that there had been an internal decision not to circulate the draft BP for comment. Bank officials therefore now propose to fundamentally change the status of this critical procedural policy instrument to a “non-board” document. The failure to release the BP document prior to Board approval further undermined indigenous peoples’ trust in the Bank’s flawed policy-making process.

In May 2005, the World Bank’s Board of Directors approved OP4.10 without any significant changes to the December 2004 draft. Indigenous peoples’ have noted some positive elements in the new policy, but express disappointment that the final revised policy fails to uphold their right to free, prior and informed consent, lacks effective provisions to recognise and respect indigenous peoples’ customary rights to their lands, territories and natural resources and contains scant language on the need for fully informed and effective participation. Indigenous peoples are disappointed that the new revised policy has not incorporated their recommendations on the need to include vital procedural safeguards to ensure third party verification of the existence or non-existence of “broad community support”:

Of specific concern is the World Bank’s recent decision to require a process of free prior and informed consultation with affected indigenous peoples’ communities to ascertain their broad community support for a project, rather than requiring the free prior and informed consent of the affected indigenous people. By merely requiring the World Bank to verify that the borrower has gained the “broad support from representatives of major sections of the community”- with no guarantees as to what information will be disclosed and when, how such verification will be conducted and by who, and how the collective decision-making processes and structures of the affected indigenous people will be recognized and respected – the free prior and informed consultation process stands to reduce indigenous peoples rights to a mere technical procedure. The weakening of free prior and informed consent as an international standard for indigenous peoples stands to severely threaten the lands, territories, and natural resources of indigenous peoples and to undermine their internationally recognized human rights [*UN Permanent Forum on Indigenous Issues, Fourth Session, May 2005: Collective statement on Multilateral Development Banks (MDBs) and Indigenous Peoples’ Rights, Including Free Prior Informed Consent*]

World Commission on Dams

In June 1994, more than 2000 civil society organisations signed the Manibeli Declaration calling on the World Bank to establish and “independent comprehensive review of all Bank-funded large dam projects”. Anti-dam campaigners, including indigenous organisations and dam-affected communities, hoped that such a review would vindicate many of their criticisms and help lead to a major reform of Bank policies and practice. After dragging its feet, in 1997 the World Bank and the IUCN finally agreed to oversee the establishment of the World Commission on Dams that would review large dams in general, and not only those financed by the World Bank.

The negotiations for agreeing the mandate and modalities of the Commission were tense, and at times civil society and indigenous peoples' organisations threatened to withdraw unless their conditions for a credible process were met. The major stumbling block centred on the demands that the selection of Commissioners include experts from dam-affected peoples which the World Bank and IUCN were reluctant to accept.

In the end, the World Bank backed down and the composition of the 12-member Commission of the WCD was agreed in 1998. Crucially, the Commission included one indigenous leader from the Philippines. The deliberations of the WCD were assisted by the WCD Forum that constituted a consultative body with 68 members, 20 of whom were drawn from NGOs and dam-affected grassroots social movements, including indigenous peoples' organisations.⁴³ The work of the WCD included commissioning case studies and research and holding public hearings in Africa, Asia and Latin America. WCD also commissioned a thematic study on indigenous peoples, ethnic minorities and dams which it agreed should include case studies written by indigenous peoples themselves and include a public hearing to listen to the case studies and discuss conclusions and recommendations. Indigenous peoples thus prepared their own detailed cases outlining the impacts of dams on their peoples and territories in Norway, Guatemala, Namibia, Malaysia, the Philippines, Chile and Canada.⁴⁴ The Indigenous peoples were also able to present their experiences to WCD consultations and comment on drafts of thematic studies. Despite efforts to impede open multi-stakeholder discussions by some governments, the WCD and its Commissioners succeeded in agreeing a consensus multi-stakeholder report that was published in November 2000.

Though not without problems (e.g., some documents were never translated into local languages), the inclusive WCD process has been widely praised by indigenous peoples as well as environmental, human rights and development NGOs. This is because the elaboration of the WCD mandate and its policy framework involved the active incorporation of different rights holders and non-governmental stakeholders whose inputs were able to shape the work programme of the Commission and influence its final recommendations.⁴⁵ In particular, the inclusion of an indigenous commissioner and indigenous participation in the consultative body helped ensure that key indigenous recommendations actually made it into the consensus report. Indigenous peoples who engaged in the process were especially satisfied that the final WCD guidelines for sustainable dam development fully recognises indigenous peoples' right to free prior and informed consent (FPIC) and establishes that FPIC is a *process* whereby each stage of a project cycle is subject to prior agreement by potentially affected indigenous and tribal peoples.⁴⁶

Disappointment with World Bank response to WCD

Although the WCD review was considered best practice in public policy-making, the Bank's negative attitude to the process and its limited follow-up to this major global review and has been disappointing.⁴⁷ As a major sponsor of the exercise, indigenous organisations and others had expected the Bank to act on the WCD recommendations and incorporate new standards in its policies. This has not happened and the Bank has only committed to using the WCD report as a "valuable reference" tool. Though the WCD process is being followed up by UNEP, the World Bank Group has so far still failed to incorporate its major recommendations into its revised policy on Indigenous Peoples and its other mandatory safeguard policies. The World Bank's refusal to implement the WCD recommendations has been heavily criticised by civil society and indigenous organisations that engaged in the process.⁴⁸

Indigenous peoples and civil society concerns about the Bank's reluctance to accept the recommendations of the WCD are becoming more acute as the Bank is now planning to

recommence large-scale lending to “high-reward/high risk hydraulic infrastructure projects” (see Section B below).⁴⁹

Extractive Industries Review (EIR)

The World Bank’s Extractive Industries Review (EIR) was an initiative set in motion in 2001 by the President of the World Bank Group, James Wolfensohn. The EIR was undertaken primarily in response to pressure on the Bank from members of Friends of the Earth-International and other environmental NGOs calling on the institution to cease funding for oil, gas and mining sector investments. However, after experiencing little direct control over the WCD review and its findings, the Bank proposed an EIR procedure which lacked many of the elements of autonomy that gave the WCD its credibility with people outside the Bank.

Unlike the WCD, the aim was not to review extractive industries as a whole, but just to focus on the World Bank Group’s (WBG) engagement with the extractive sector (oil, mining, gas). Another major difference was that whereas the WCD included a whole board of independent commissioners, the EIR centred around an ‘Eminent Person’ (EP): Dr Emil Salim ex-Indonesian Minister for the Environment and Population during the 1980s and early 1990s. It was Dr Salim alone, who had authority to decide what the final report of the consultation process would say.⁵⁰ The early terms of reference for the EIR and its organisation were strongly criticised by civil society organisations for giving undue influence to the World Bank and for limiting the scope and potential outcomes of the study.⁵¹ In response to these criticisms, the EIR terms of reference were partially revised and the EIR secretariat was moved to Jakarta outside the Bank.⁵²

Despite the problems with the process, indigenous NGOs and support NGOs including the FPP were able to persuade the Eminent Person that he should commission a series of fully independent indigenous case studies of the impact of World Bank extractive sector activities on indigenous peoples in Colombia, Cameroon, Papua New Guinea, India, Indonesia, the Philippines and Russia.⁵³ The indigenous authors of the studies were able to present their powerful stories directly to Emil Salim in a workshop held in April 2003. The participants forcefully expressed their frustrations with the World Bank and made far reaching recommendations calling on the World Bank to fully respect their rights through reform of their policies and practice.⁵⁴

Doubts about the credibility of the EIR process were confirmed in early 2003 when the first outline draft of the report was posted on the EIR web site. Indigenous organisations and NGOs were alarmed to see that their recommendations had been disregarded and the draft report concluded that Bank engagement with the sector was beneficial and should continue. In the EIR regional Asia-Pacific consultation meeting, indigenous organisations joined NGOs in a walk out in order to publicly express their dissatisfaction with the process. Civil society and indigenous organisations threatened to pull out of the process altogether unless immediate changes were made to the final stages of the EIR process to ensure the final compilation of its report would be inclusive, independent, and be guided by a multi-stakeholder advisory panel, that would include at least one indigenous expert. This panel was formed in June 2003 and included an indigenous leader from Argentina.

Reports from indigenous and NGO panelists indicate that the panel worked relatively well. Drafts were shared with members of the advisory panel for comment on a regular basis right up until the finalisation of the report. Emil Salim, however, was the sole author of the report and exercised complete editorial control.

The result was a frank report that made a series of progressive recommendations about how the World Bank Group should reform and how human rights, including indigenous peoples' rights and FPIC, should be respected in World Bank policies and operations.⁵⁵ Indigenous and support organisations that took part in the EIR consider that the combination of direct testimony by indigenous peoples and direct indigenous participation in the drafting process helped bring about some useful outcomes in the final report. Like the WCD review, the EIR report recognised that indigenous peoples should have the right to give their free, prior and informed consent throughout each phase of the project cycle and that FPIC should be seen as the principle factor in determining if the World Bank, its borrowers and the private sector have a "social license to operate" or not.⁵⁶ The same report recommended that the World Bank work with the UNPFII in a joint effort to incorporate FPIC and other measures to respect indigenous peoples' rights into the Bank's safeguard policies and project-related instruments.⁵⁷

Despite these important substantive gains in the final stages of the EIR, indigenous organisations and NGOs stress that for much of the two-year process they were obliged to divert a lot of their efforts to trying to rectify a review framework that was badly designed and excessively controlled by the World Bank and, which had ignored civil society calls for a truly inclusive and independent review.

Disillusion with the World Bank response to EIR

In June 2004, the World Bank released its formal response to the EIR report and the EIR recommendations. Civil society and indigenous organizations that had engaged with the EIR were disappointed with the vague Bank response and the fact that many critical issues were deferred to ongoing processes such as the IFC safeguard update and the revision of the Bank's Indigenous Peoples Policy. In particular, indigenous peoples were indignant that the Bank's management response (MR) did not accept the EIR recommendations on indigenous peoples and FPIC, but instead advised that the Bank will only support EI projects with free, prior and informed *consultation* (FPICon) resulting in the "broad community support" of affected communities. In a letter to the Bank in July 2004, indigenous organisations strongly rejected FPICon language:

The (Bank's) misappropriation and misinterpretation of FPIC as free, prior and informed consultation is unacceptable. In principle, the same is also the case for applying a 'broad community acceptance/support' standard to indigenous peoples as this undermines indigenous peoples' internationally guaranteed right to consent to activities that affect us and equates indigenous peoples and our rights to those of any local community. In effect, this negates indigenous peoples' self-determining status and rights by casting indigenous peoples as nothing more than a sub-set of local communities.⁵⁸

Indigenous peoples and support NGOs also complain that the Bank's position on FPIC as cited in its initial response to the EIR was clearly incorrect. For example, the Bank affirmed that all governments and industry are opposed to FPIC, which is a false statement as FPIC has been accepted by a number of countries and industry associations.⁵⁹ Despite an indigenous petition (signed by 60 indigenous organisations worldwide) rejecting the MR and calling on the Bank's governors to fully adopt the EIR recommendations on human rights and Indigenous peoples, the flawed management response was endorsed by the Bank's board in August 2004.⁶⁰

The problematic FPICon language repudiated by indigenous peoples was therefore subsequently included in the Bank's revised policy on Indigenous Peoples (OP4.10) adopted in May 2005 (see above), though it now seems this flawed language is likely to be deleted from the IFC's draft performance standards. Despite this late move by the IFC to address indigenous complaints, serious criticisms of the IFC process still stem from signs that its safeguard policy update process is failing to properly address human rights and other key EIR recommendations.⁶¹

World Bank Fails to learn from past mistakes

Taken together, indigenous peoples' experiences of participation in the World Bank's consultations on its policy revision process have not been good. Indigenous peoples share a widespread perception that instead of acting on indigenous priorities, the revisions to the World Bank safeguard policies have mainly addressed the concerns of borrower governments and private sector clients – thus greatly diminishing their credibility as safeguards for indigenous peoples. While sector reviews have been comparatively more effective at enabling inputs, the Bank's refusal to adopt progressive recommendations that have stemmed from these participatory reviews has left indigenous peoples and indigenous activists increasingly sceptical of the Bank's so-called "consultation" processes. 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..."⁶²

Face-to-face engagement between indigenous peoples and Bank officials, such as the 2002 roundtable on draft OP4.10, has proved useful for raising concerns. However, indigenous peoples and support NGOs have been frustrated that the Bank has not fulfilled key commitments e.g., to hold a legal roundtable. Disenchantment is also high because the World Bank seems to be incapable of learning from past mistakes. Recent examples of ongoing errors include:

- Rushed consultations with incomplete documents in the wrong languages. For example, in August 2004 the IFC launched a consultation on its Safeguard Policy Update that was widely condemned for failing to meet the standards of good faith public consultation.⁶³
- Making decisions on policies that may directly affect indigenous peoples without ensuring their direct participation. For example, in 2004/05 the Bank has rushed through a new pilot "Country Systems Approach" that is likely to have major implications for the way the Bank will deal with indigenous peoples affected by its loan operations. To date, however, the Bank has not held a targeted consultation with indigenous peoples regarding its controversial provisions on country systems found in OP 4.10⁶⁴
- Making key decisions on standards directly relevant to and of interest to Indigenous peoples behind closed doors. For example, Bank policy makers and senior management took a unilateral decision not to disclose the draft Bank Procedures on Indigenous Peoples (BP4.10) prior to its formal adoption – thus depriving indigenous peoples of the opportunity to participate in a vital part of the safeguard framework to be employed by the Bank.

B World Bank Projects and Programmes

The World Bank does not have a stand-alone policy on public and community participation in its projects and programmes. Nonetheless, mandatory participation and information disclosure requirements are embedded within 14 World Bank operational policies, including the previous and existing policy on indigenous peoples. The previous Indigenous Peoples Policy, which remains in force until July 2005, requires that:

The Bank's policy is that the strategy for addressing the issues pertaining to indigenous peoples must be based on the informed participation of the indigenous people themselves... (Paragraph 8).

In relation to the development and implementation of an IPDP the former policy stipulated that:

Mechanisms should be devised and maintained for participation by indigenous people in decision making throughout project planning, implementation, and evaluation ... (Paragraph 15(d))⁶⁵

The Bank's 1995 guidelines on participation and indigenous peoples advise Bank staff that the "building blocks" of effective indigenous participation should include:

- use of vernacular languages with skilled interpreters
- involvement of indigenous peoples' representative organisations
- capacity-building to enable informed engagement
- adequate time for consultation so that indigenous views can be addressed
- special procedures to ensure that indigenous women have a voice
- repetition of meetings ... over a long period of time⁶⁶
- *culturally appropriate* participation methods⁶⁷

Failure to implement participation standards and guidelines

Although the World Bank has rightly adopted several binding rules and best practice guidelines on participation, these have often not been applied in its projects and programmes affecting indigenous peoples. 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. These studies confirm that World Bank staff and project agency engagement with indigenous peoples has frequently been late, perfunctory and/or culturally inappropriate. It is not uncommon for indigenous communities to only learn of a project once it has already started after key assumptions made and decisions taken by outsiders.⁶⁸

The failure to implement the existing participation standards is confirmed by the World Bank's own evaluations. A desk-based review of 89 Bank projects affecting indigenous peoples approved after January 1992 and closed prior to 31 May 2001 carried out as part of the OED evaluation of the implementation of OD4.20 found that 38% of projects had not applied the policy at all.⁶⁹ Even where the OD had been applied to some degree, the review of the 1992-2001 project sample found that indigenous peoples were only involved in the decision-making process relating to the project in half of the projects – leading to the conclusion that "*even among the projects that applied the OD...participation of indigenous peoples in decision making and in financial management is still low*".⁷⁰ OED examination of 87 "open projects" approved after 2001 that affect indigenous peoples found that almost 20% had little or no measures at all to enable indigenous participation.⁷¹ The same review found that those projects that do include

participation components, usually confine such measures to conventional consultation meetings.⁷² Field evaluation of projects also found that many projects lacked any capacity building for affected communities restricted their informed participation in project design and implementation.⁷³ A 2004 internal evaluation of 48 full-size and medium-sized projects undertaken by the World Bank found that just 28% of its biodiversity projects in Latin America involved high levels of indigenous participation on project design. The same review found that 38% of projects suffered from “low” participation of indigenous peoples and only limited involvement of indigenous peoples in project preparation.⁷⁴

Disagreement over the meaning of informed and effective participation

Damning as these official statistics are, the actual level of genuine participation in Bank projects may well be far lower in practice. In other words, though the World Bank, implementing agencies and evaluation teams may consider participation has taken place in a specific project or programme, time and again affected indigenous communities report that consultation and participation has been seriously deficient. Today, there is a growing tendency for Bank staff to document indigenous “participation” in project preparation processes (usually listing a series of meetings and workshops and organisations that attended as an annex to project appraisal documents). However, communities and their representative organisations often do not feel they have been properly consulted and do not consider they have enjoyed informed participation in project design. There is a widespread feeling that so-called “participation” in Bank projects is partial and usually restricted to village meetings in which consultants “extract” information about development “needs”, more to fulfil their own requirements than to address the genuine priorities of indigenous communities.

Indigenous peoples’ affected or “targeted” by World Bank projects experience a serious cultural disconnect between their own understandings of effective participation and the understandings of “participation” held by World Bank staff, consultants, and government and NGO implementing agencies. In many cases, indigenous peoples complain that project agencies confuse “consultation” with informed participation, when the two relate to quite distinct processes. **Indigenous peoples stress that they do not wish to be “consulted” or “participate” in development which is beyond their direct control or is without their prior consent.**⁷⁵ Meaningful participation must include the right to influence decisions and determine their own path of development, including the right to reject unwanted development proposals. In many cases indigenous organisations complain that they have been unable to influence key decisions on project design relating to budget allocations, disbursement and the role of indigenous organisations in project governance. Key projects documents and annual operational plans are often not available at the community level. Indigenous peoples complain that these documents remain in the hands of project elites and government officials in towns and cities.⁷⁶

Even projects identified as “best practice” by OED evaluations, are not considered as such by some of the key indigenous organisations involved. One example is the *Brazil-Bolivia Gas Pipeline Project* which involved several public meetings with indigenous organisations about project design and regarding the IPDP. After these meetings, some indigenous leaders felt they had been manipulated and that their own decisions and concerns were not respected by the Bank:

We wanted to alter the proposed route of the pipeline but we had no influence – it was already decided. I see it now as a game that has no concrete result for us...the workshops and discussions are held simply to comply with Bank guidelines. We conclude that the Bank’s discussions are organised to stem our criticism of proposed projects (President, Asamblea de Pueblos Guaraní - APG, October 1999)⁷⁷

Indigenous representatives that have occupied places on the executive bodies governing Bank loans complain that they do not enjoy effective participation in project governance and lack adequate technical assistance and capacity building to enable their informed participation. A case in point is the World Bank-implemented *Indigenous Management of Protected Areas in the Amazon (PIMA)* project in Peru. Although the president of the indigenous peoples' organisation AIDSEP has a seat on the governing body of the project, indigenous leaders complain that their priorities are sidelined by the other non-indigenous members who form the majority of the project Directorate.⁷⁸ The PIMA case reveals that, where governance bodies are dominated by government and NGOs and a majority voting system is used, indigenous peoples' representatives are often marginalised on key decisions and are thereby actually disempowered by the project.

Project "participation" as a government tool for social control and co-option

As noted above, another frequent indigenous criticism is that World Bank-sponsored consultation meetings are used primarily by project officials and consultants to give legitimacy to the project, gain access to communities, divide opinion and pressure local indigenous communities to accept the external agendas of governments, development agencies, big business and NGOs.⁷⁹ In the worst cases, instruments that are supposed to ensure informed participation such as the Indigenous Peoples Development Plan (IPDP) are used by World Bank project agencies to promote their own top-down agendas.

In the *Andhra Pradesh Community Forest Management Project*, for example, the IPDP was largely written by external consultants. The final adopted plan aims to extinguish customary rights and reduce the traditional dependence of indigenous communities on forest lands. At the village level, most indigenous leaders are not even aware that such a plan exists. On learning of its unjust objectives they express stiff opposition to the IPDP goals that threaten to infringe their rights and undermine their livelihood security.⁸⁰

Indigenous peoples often complain that World Bank projects that "target" their communities in the name of development and conservation are implemented by NGOs that have weak links to the communities. These intermediary NGOs hold consultation meetings and undertake rapid "participatory" methodologies that are completed in a very short time. Ironically, "participatory" methodologies that were formulated in the 1990s to avoid imposed development planning (e.g., Participatory Rural Appraisal – PRA), have become another top-down tool for extraction of local information by outsiders and project elites.⁸¹

Lack of effective or culturally appropriate monitoring indicators

A further finding of the OED evaluation of the implementation of OD4.20 is that World Bank projects typically lack adequate indicators for indigenous participation and some lack monitoring systems altogether. Even projects with stand-alone IPDPs normally lack participation indicators. In many Bank projects, it is thus impossible to verify if indigenous peoples have participated or not. It is even harder to assess the quality of participation as most indicators are based on quantitative outputs (number of meetings etc) rather than on measures of the effectiveness of type of participation delivered.⁸² Even where participation indicators are used in World Bank projects, this review has found no evidence to show these have been agreed upon in a participatory manner with affected communities.

Progress at the Project and Programme Level?

There are a few cases where indigenous peoples have enjoyed a greater level of participation in the Bank projects. In some regions such as Latin America, the Bank has introduced "do good" projects targeting indigenous peoples, which aim to support poverty reduction, 'ethno-development', natural resource management and land titling.⁸³ These new approaches have brought mixed results and critics argue they have caused divisions in national and local

indigenous movements, failed to address the underlying structural causes of indigenous poverty and, so far, have not been very effective in addressing the policy, legal and practical problems that undermine indigenous land and resource security.⁸⁴

Though not without significant problems, indigenous organisations acknowledge that some of the Bank's ethno-development and natural resource management projects in Latin America have involved more effective participation. Case studies reveal that more informed participation in these projects 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.⁸⁵ One reported example of high quality implementation is found in 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.⁸⁶

Limited or defective participation in national-level policy processes

Despite the emergence of a new generation of Bank loans targeting indigenous peoples at the project level, indigenous organisations monitoring the World Bank point out that much of the Bank's business is now channelled through country-wide programmatic loans. Many of these new loans 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. Indigenous peoples complain that these largely unaccountable development interventions continue to have severe negative consequences for indigenous peoples and their territories throughout the world. They point out that these operations lack transparency and are largely unaccountable to the public.⁸⁷

In the same way, indigenous peoples are usually not even consulted in relation to World Bank technical assistance loans that assist the reform of natural resource legislation that directly affects the rights, territories and welfare of indigenous peoples.⁸⁸ Indigenous peoples point out that the World Bank applies double standards in its loan operations. While social development projects may feature participatory activities and consultations, major Bank interventions in the energy, water, mining, governance, land administration sectors are undertaken behind closed doors with little or no indigenous or public participation at all and limited or zero information disclosure.⁸⁹

In 1999 The World Bank began to introduce Poverty Reduction Strategy Papers (PRSPs) in highly indebted countries (HIPC) with the aim of replacing its top-down adjustment loans with more participatory strategic poverty alleviation programmes driven by grassroots priorities. However, the PRSP process has so far failed to foster alternative macroeconomic models. Indigenous and civil society groups have been frustrated that their own plans for economic and social development have been sidelined by the PRSP process, which has continued to apply the conventional adjustment remedies based on privatisation, foreign-direct investment and export-led growth.

Even if civil society organisations and NGOs gain some level of participation in the PRSP process, indigenous organisations are left out or marginalised or just identified as "poor people" to be measured, counted and documented. In Rwanda, for example, though much of the PRSP was reported to be written by foreign consultants in coordination with the Ministry of Finance, urban-based NGOs were able to make some inputs. However, according to information available to this review, indigenous groups such as the Batwa were not meaningfully consulted prior to the adoption of the PRSP. One apparent exception to the poor participation record in PRSPs is

Bolivia, where indigenous representatives were at least involved “to some extent” and succeeded in securing some specific policy provisions on indigenous peoples.⁹⁰

Is the World Bank learning lessons?

Evidence from recent projects and programmes in Asia and Africa reveals that some World Bank loan operations continue to lack effective indigenous participation during project design and preparation. During implementation, projects still tend to apply pro-forma consultation exercises that do not enable meaningful participation. In Jharkhand State in India, for example, voices of dissent from Adivasi leaders have been routinely ignored in World Bank public consultation meetings in 2003 and 2004. The Bank and government have pushed through plans for pilot investments for a controversial forestry Joint Forest Management (JFM) project, even though numerous statements by Adivasi organisations have rejected the state’s 2001 JFM policy.⁹¹

Despite serious and unresolved controversies over the GEF-assisted India Ecodevelopment project (IEP) that closed in 2004, the government of India is seeking GEF and World Bank finance for another IEP-style intervention, that is to be renamed a *Biodiversity Conservation and Rural Livelihood Project*. As current proposals stand, there are few indications that indigenous and tribal organisations have been consulted about the project. Furthermore, local Adivasi communities and support NGOs have not requested this new project. The proposed project has all the makings of yet another imposed and unwanted programme conceived and implemented by government agencies and conservationists.

There are also signs that the Bank continues to base project preparation on “consultations” in countries where freedom of expression is seriously constrained. In 2005, for example, the World Bank is moving to lend money to the controversial Nam Theun II dam in Laos. Bank consultants acknowledge that the dam will displace 6,200 indigenous people from 17 villages on the Nakai plateau.⁹² Although indigenous peoples have attended consultation meetings on the project, and have been able to express their concerns,⁹³ native speaking observers have criticised the narrow remit of the consultation and the doubtful impartiality of some project information provided in local languages.

Despite requests by major donor governments that the World Bank (IDA) “take into account” the core values and strategic priorities of the WCD in preparing and evaluating new dam projects, Nam Theun 2 clearly does not conform to WCD strategic priorities. Indigenous peoples’ free, prior and informed consent has not been sought during consultations and no agreement on how to express and verify consent was made prior to the planning process. Furthermore, communities faced with resettlement have not been given access to legal or other independent support. Participation has been confined to outdated, low-level “consultation” where the views of villagers are listened to and documented by project officials and consultants.⁹⁴

Continuing top-down World Bank interventions in Africa also remain common. For example, in the Democratic Republic of Congo, the World Bank has been heavily criticised by indigenous and civil society organisations for pushing through reforms to the Forest Code without meaningful consultation with forest-dependent communities and their representative organisations.⁹⁵ In Cameroon, the Chad-Cameroon pipeline project, that has been hailed by the Bank as a “model” extractives project, has struggled to ensure meaningful and effective participation by affected Bagyéli communities. What modest gains have been made in this controversial project have come after long protests and years after they were formally required by Bank policies.⁹⁶

In Latin America, reports indicate that greater indigenous participation in Bank projects has become more prevalent in recent years. In Bolivia, for example, indigenous organisations complained bitterly in the mid-1990s that they were given virtually no prior information regarding the first phase of the World Bank/GEF *Sustainability of the Bolivian Protected Area System* project (GEF I), but had gained some participation in the GEF II project in recent years.⁹⁷ Under the GEFII programme some indigenous organisations have been supported by the World Bank/GEF to co-manage protected areas. However, indigenous leaders complain that the attitudes of some implementing agency staff and government officials still blocks effective indigenous participation in decision making, and stifles the disbursement of funds allocated for indigenous communities and indigenous project components.

Despite these gains in some programmes, as discussed above, even so-called “do good” projects in Latin America still suffer severe problems and have been unable to deliver effective participation. In Peru, for example, the Bank learning and innovation loan for the *Proyecto de Desarrollo de los Pueblos Indígenas y Afroperuanos (PDPIA)* has been roundly condemned by the indigenous movement for failing to deliver effective indigenous participation, disregarding indigenous priorities and overlooking irregularities in the governance of the project.⁹⁸

There is little evidence from any region to show that the World Bank has enhanced effective participation in national policy formulation, programmatic lending or technical assistance loans. In India for example, in 2004, civil society organisations condemned the World Bank’s new 2004 Country Assistance Strategy (CAS) for being based on a flawed consultation process that lacked transparency, failed to provide prior information, provided just two-days notice prior to public meetings to discuss the draft CAS and disregarded the concerns of rights holders and citizens.⁹⁹

C Accountability and Redress mechanisms

Independent evaluations of the usefulness of the Inspection Panel have shown that while it 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.¹⁰⁰ Where complaints have been launched early on in a project cycle and prior to Board approval, complaints that have been upheld by the Inspection Panel have been successful in stopping flawed projects going ahead. However, once a project has already got underway, the Inspection Panel has not been effective at delivering solutions.

There is also mounting evidence that the IFC and MIGA's centralised Compliance Ombudsman Office (CAO) suffers similar problems given its very technical approach, its distant base in Washington DC and its reliance on infrequent field "missions". Affected indigenous communities such as those in Singrauli in India have complained that Inspection Panel field visits to their communities have been very rushed. Concerns have also been expressed about the lack of full independence of panel field missions when investigators have been accompanied by government officials and Bank staff involved in the problem project.¹⁰¹

In Cameroon, NGOs observers report that Inspection Panel visits to affected Bagyéli communities in 2003 did not involve impartial translation services. Due to defective translation, key issues being raised by the aggrieved community members were not conveyed to the investigator resulting in a skewed and unhelpful Inspection Panel report. Communities who took the time to work with local NGOs to submit a complaint to the Panel were left deeply disillusioned on learning of the contents of the Panel report that did not record their concerns faithfully.

In some cases, indigenous communities that have launched complaints to the Inspection Panel have felt disempowered after learning that they have no direct influence over the process after submitting their complaint. Many observers point out the Inspection Panel and CAO are not fully independent and their assessments of the eligibility of claimant requests for investigation are often based on the advice of the Bank's own legal department. At the same time, the "standards of harm" which claimants must meet to be considered eligible have been criticised for being unduly narrow and confined solely to issues relating to (now sometimes outdated) safeguard policies. Given these limitations with existing accountability mechanisms, indigenous and civil society organisations have been calling on the Bank and other IFIs to require complementary accountability mechanisms for their development operations at the project or programme level that are more agile, more accessible, more independent and mandated to deliver redress.¹⁰²

III Conclusions and Recommendations

This review has discussed indigenous peoples' experiences of participation in four World Bank activities: sector reviews, World Bank policy making, national policy processes, and World Bank financed programmes and projects. Some key findings and recommendations are set out below.

Sector reviews

Main findings

- Concerns expressed by indigenous peoples and civil society about problems with review processes and consultation procedures tend to be dismissed by the World Bank – resulting in flawed consultations from the outset (e.g., Extractive Industries Review – EIR: 2001-2003)
- World Bank determination to press head with flawed review processes in the face of public criticisms generates controversy and wastes time as indigenous peoples' organisations and NGOs expend energy trying to rectify the consultation or organise a boycott of the defective process
- Indigenous and civil society organisations have not been satisfied with the participation in sector reviews run entirely by the Bank because they have not been able to significantly shape findings and outcomes of the review (e.g., Forest Policy Implementation Review and Strategy Process: 1999-2002).
- Participation of indigenous peoples has been relatively effective in reviews where indigenous experts and indigenous organisations have been part of an inclusive and impartial process – independent of the World Bank Group (e.g., World Commission on Dams)
- Semi-independent reviews applying the Eminent Person (EP) model have proved useful in ensuring balanced participation where an advisory panel has included different rights holders and interest groups, but final outcomes ultimately depend on the credibility and decisions of the EP e.g., EIR, 2001-03
- World Bank follow-up and commitment to act on the findings of sector reviews have been weak, and this has generated frustration and disillusion among indigenous organisations and leaders who engaged with these processes
- The World Bank failure to adopt progressive recommendations of sector reviews it has sponsored has continued to weaken already minimal (and often non-existent) trust that indigenous peoples and civil society organisations have in the World Bank Group.

Recommendations

- Minimum conditions for the engagement of indigenous peoples and civil society engagement and participation should be agreed prior to commencing the review
- The World Bank and other agencies party to (or the subject of) the review must affirm how review findings and recommendations will influence policy and practice (as part of the agreed terms of engagement)
- Terms of reference of the review body should be mutually agreed with indigenous peoples and major groups
- Reviews should be conducted in a framework that guarantees maximum independence from the World Bank Group

- Participation, transparency, accountability mechanisms should be built into the work programme of the review and into the procedure for compiling the review report and recommendations

Policy revisions and standard-setting processes

Main findings

- Indigenous peoples have been deeply disillusioned that the World Bank has failed to incorporate practical standards on issues that they have requested for over fifteen years e.g., human rights and free, prior and informed consent
- Policy revision processes at the World Bank have been marked by defective public consultations that have been condemned by indigenous peoples who engaged with the process e.g., revision of World Bank Indigenous Peoples Policy (Draft OP/BP4.10)
- Public consultation procedures have not complied with the Bank's own policies nor with its guidelines for effective participation processes for indigenous peoples e.g., OP4.10
- World Bank policy makers tend to place emphasis on the quantity of consultations, while indigenous peoples emphasise what is important is the quality of informed participation
- Explanations of how indigenous peoples' inputs to policy processes will or will not affect the outcomes of the policy process have not been provided, or explanations are unclear (e.g., Draft OP/BP4.10)
- Bank policy-makers are slow to react to legitimate concerns about process expressed by indigenous peoples and support NGOs, sometimes taking years to respond e.g., need for full implementation review of OD4.20 to inform Draft OP4.10
- Policy revision processes have suffered a lack of transparency for long periods where indigenous peoples are not informed of progress nor of how their inputs are being dealt with e.g., OP4.10
- Commitments made in face-to-face meetings are not followed up or are fudged e.g., legal roundtable on OP4.10
- The current draft OP4.10 proposes a two-tier standard for participation: one for investment projects and one for protected area projects, which is not acceptable
- Major changes in policy are introduced without adequate consultation e.g., late insertion of country systems safeguard option in draft OP4.10
- Trust has been weakened when policy makers and senior Bank management have closed down participation spaces during the final stages of policy revision e.g., decision not to publicly release BP4.10 prior to its adoption.

Recommendations

- The World Bank (and other agencies) should not launch public consultations on policy revision until terms of engagement have been mutually agreed with affected rights holders and other interested parties
- Include clear explanations and commitments on how inputs by indigenous peoples will influence the policy

- Where indigenous peoples so choose, in addition to public consultations, establish an advisory body with self-selected indigenous experts and/or representatives to give guidance on policy analysis and revision
- Do not ignore rejection of the consultation: attend to these as a matter of urgency
- Respect and address indigenous concerns about process problems or infringements of the agreed terms of engagement in a timely manner
- Be prepared to suspend a consultation process to address concerns
- Do not change the consultation process or renege on participation and disclosure commitments
- Provide incentives for staff overseeing the policy revision to ensure all that, as a minimum, all consultations meet with World Bank rules and guidelines and indigenous peoples participation rights established in international and national laws
- Where required, provide capacity building to enable indigenous peoples to enjoy informed participation the process e.g., funds for autonomous and independent preparatory meetings
- In relation to current revision of the IBRD/IDA Indigenous Peoples Policy: publicly release draft BP4.10 and take steps to ensure effective indigenous participation in public scrutiny of its contents prior to its finalisation and adoption
- In relation to the IFC Safeguard Policy Update Process: ensure that meaningful participation is facilitated to enable indigenous peoples to comment on the proposals
- Refrain from adopting the World Bank/IFC revised policies in the event that indigenous peoples do not consider that the draft policies constitute adequate safeguards to protect their rights

National policy processes

Main findings

- Country Assistance Strategies (CAS) are sometimes formulated without the effective participation of indigenous peoples and their representative organisations and contain policies and contain policies that are not acceptable to them
- Participation of indigenous peoples in Poverty Reduction Strategy Papers (PRSP) is weak or non-existent, and is based on outdated and low-grade consultation procedures
- CAS and PRSP often fail to properly mainstream human rights, including indigenous peoples' human rights into their policies and objectives
- World Bank technical assistance loans for national legal and policy reforms affecting indigenous peoples lack transparency and do not feature mechanisms for informed participation
- Preparation and appraisal of programmatic adjustment or "development policy" loans usually do not enable informed participation of indigenous peoples.
- Adjustment loans represent a growing part of the World bank's lending portfolio, but the institution has not instituted additional effective public participation mechanisms to adapt to its changing business

Recommendations

- Ensure World Bank country strategies and World Bank-financed policy formulation processes mainstream human rights, indigenous peoples' rights issues into CAS policies and objectives
- Improve and make mandatory public participation mechanisms in World Bank promoted or assisted national policy processes, including technical assistance interventions
- Where particular rights holders, such as indigenous peoples, reject Bank policies in a World Bank consultation meeting, the Bank should refrain from adopting such policies. As an absolute minimum, objections and dissenting views made in public should be recorded in a general way in the preface to such official documents (while protecting the identity of specific individuals or organisations).

Projects and programmes

Main findings

- Indigenous peoples still experience most World Bank-assisted project and programmes as top-down interventions run by governments and outsiders
- Affected or “targeted” communities have often not requested such projects
- Much is written about participation in Bank project and programme documents, but in practice the out-dated information-sharing “consultation” model remains dominant.
- Such consultations fail to ensure adequate provision of all relevant information and the pros and cons of World Bank plans. Incomplete information prevents informed participation and drastically inhibits informed decision-making among affected communities;
- Key project documents are often not available to representative organisations and communities or are only available in inappropriate languages, which frequently prevents informed participation
- Key elements of the project that affect indigenous peoples are designed by outsiders and adopted without their prior agreement e.g., IPDPs
- World Bank projects that affect or involve indigenous peoples are sometimes marked by disagreements over whether or not informed participation has taken place.
- So-called “consultation” is often culturally inappropriate and does not respect cultural and linguistic customs and decision-making practices of indigenous peoples
- Low-level “passive”, “information-giving” and “consultation” modes of participation remain the norm in project preparation
- Project implementation normally only involves low-grade “functional” participation in external predetermined project goals and activities are imposed through micro-planning, project “committees” or “self-help” groups.
- World Bank standards on participation contained in its operational policies are routinely violated in projects and programmes affecting indigenous peoples, particularly in Africa and Asia
- World Bank projects sometimes violate indigenous peoples' participation rights established in international law and under national legislation
- Indigenous peoples do not normally participate in negotiations between the World Bank and Borrower government over the loan agreement and its conditions

- Loan agreements between the International Finance Corporation and private sector “clients” are confidential and indigenous peoples affected by IFC projects are not involved in the negotiation of such agreements
- Where indigenous peoples do secure some participation in project governance, they are often marginalised and their concerns and proposals are overruled by non-indigenous project authorities
- Indigenous representatives on project governance bodies are not provided with technical support to enable their informed participation.
- Participation mechanisms for engagement with World Bank complaints processes are weak and defective e.g., Inspection Panel, CAO

Recommendations

To move away from the outmoded participation standards confined to measures to ensure benefit sharing and social mitigation, the World Bank must ensure that its development standards, including its proposed IFC performance standards, adopt a rights-based approach to participation and development. To this end, the Bank’s revised policies must:

- Acknowledge the World Bank Group’s responsibilities and obligations under international law, including its obligation to respect human rights, including the rights of indigenous peoples in all its policies and operations;
- Explicitly state that the activities and investments of the World Bank Group shall not hinder or undermine state obligations to respect national and international human rights norms
- Include a clear statement that the World Bank will not finance projects/activities that contravene borrower/host country obligations under international law, including their obligation to respect the rights of indigenous peoples.
- Establish that the World Bank (including the IFC) will only support projects that have the free, prior and informed consent of affected indigenous peoples arrived at through their customary decision-making processes and institutions subsequent to meaningful and good faith consultation and their informed participation commencing at the earliest stages of project design, and agreement on benefits
- Require indigenous peoples’ informed participation in all decision-making processes in relation to World Bank policies and projects that may affect them and may impact on their lands and territories
- Stipulate that all World Bank projects affecting indigenous peoples (not just those perceived or judged to have adverse impacts) must respect indigenous peoples’ right to give or withhold consent to any proposals that affect their lands and communities
- Require mechanisms for independent (of the World Bank and borrower/client) third party verification and certification that prior agreement exists and has been freely obtained.
- Where consent is given, require that such prior approval and attached conditions are detailed in written agreements between the indigenous peoples, borrower/client and the World Bank. The mutual agreement and acceptance of documentation of consent will be verified by the representative organisation(s) of the affected community and certified by an independent third party.
- Require that draft IPDP, IPP or any other written project instrument targeting indigenous peoples are not adopted until their contents and budget have been agreed by affected communities

- Written agreements on consent and on specific project plans will be included in loan covenants and shall provide mechanisms to ensure that indigenous peoples can access and obtain meaningful remedies in cases of breach of the written agreement.
- Establish that Indigenous peoples, if they so choose, have the right to participate in all impact assessments and baseline studies.
- Require a built-in grievance/complaints/mediation mechanism for addressing disputes about the existence of consent in the initial and in subsequent stages of project discussions and in each stage of the project cycle (should the project go ahead).

Endnotes

¹ The aim of the paper is to review key experiences documented in existing literature and draw out critical lessons and identify obstacles to meaningful and effective participation.

² Irene Daes, 1996, *Supplementary Report of the Special Rapporteur on the Protection of the Heritage of Indigenous Peoples* United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, forty-eighth Session, E/CN.4.Sub.2/1996/22; *General Recommendation VIII concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention (1990)*; *Concluding Observation of the Committee on the Elimination of Racial Discrimination. Denmark 21/05/2002*.; See also *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted pursuant to Commission resolution 2001/57*. UN Doc. E/CN.4/2002/97, at para. 100

³ <http://www1.umn.edu/humanrts/instree/declra.htm>

⁴ Indigenous peoples need not fulfil all the criteria to be considered “indigenous” by World Bank staff. The Bank’s wide-ranging approach therefore encompasses the ‘tribal’ people of Asia, Afro-American communities in Latin America and marginalised ethnic communities in Africa (OP4.10 paragraphs 3. and 4).

⁵ See, for example, Treakle, K (1998) “Treakle, K (1999) “Ecuador: structural adjustment and indigenous environmentalist resistance” pp.219-264 *in* Fox J A and Brown L D (Eds)(1998a) *The Struggle for Accountability: the World Bank, NGOs, and grassroots movements* The MIT Press, Cambridge (MA) and London

⁶ On different types of “participation”, see Pimbert, M (2003) “The Promise of Participation: democratising the management of biodiversity” *Seedling, July(2003):23-28*

⁷ López, A (1992) “Alto Bayano: cronología de la lucha del pueblo kuna” *Este País No.36(1992):25-28*

⁸ Stewart, J *et al.* (1996) *A People Damned: the impact of the World Bank Chixoy Dam in Guatemala* Witness for Peace, Washington, DC

⁹ Davis, S (1977) *Victims of the miracle* CUP, Cambridge; Price, D (1989) *Before the bulldozer: the Namibiquara Indians and the World Bank* Seven Locks Press, Washington

¹⁰ Bello, W, Kinley, D and Elinson, E (1982), *Development Debacle: The World Bank in the Philippines*, Institute for Food and Development Policy, San Francisco; Drucker, C (1984) “Dam the Chico: Hydro Development and Tribal Resistance in the Philippines” *in* Goldsmith, E. and Hildyard, N. (eds.) *The Social and Environmental Effects of Large Dams*, Volume 2: case studies, Wadebridge Ecological Centre, pp. 304-313

¹¹ On the negative impacts of World Bank development projects on indigenous peoples during the 1960s and 1970s, see Davis, S (1977) *Victims of the miracle* CUP, Cambridge; Price, D (1989) *Before the bulldozer: the Namibiquara Indians and the World Bank* Seven Locks Press, Washington, DC; Bello, W, Kinley, D and Elinson, E (1982), *Development Debacle: The World Bank in the Philippines*, Institute for Food and Development Policy, San Francisco; Drucker, C (1984) “Dam the Chico: Hydro Development and Tribal Resistance in the Philippines” *in* Goldsmith, E. and Hildyard, N. (eds.) *The Social and Environmental Effects of Large Dams*, Volume 2: case studies, Wadebridge Ecological Centre, pp. 304-313; DeWalt, B R (1986) “Economic Assistance in Central America: development or impoverishment?”

Cultural Survival Quarterly 10(1)(1986):14-18; López, A (1992) "Alto Bayano: cronología de la lucha del pueblo kuna" *Este País* No.36(1992):25-28

¹² A Bank internal review of the implementation of the policy, carried out in 1987, found that more than half of the projects affecting indigenous peoples had ignored the policy altogether. See, World Bank (1987) *Tribal Peoples and Economic Development: a five-year implementation review of OMS 2.34 (1982-86)* Office of Environmental and Scientific Affairs, World Bank, Washington, DC

¹³ Mindlin, B (1990) "Le projet Polonoroeste et les Indiens" *Bresil, Indiens et Developpement en Amazonie - Ethnies* 11-12(1990):87-96; Treece, D (1987) *Bound in Misery and Iron: the impact of the Grande Carajás Programme on the Indians of Brazil*, Survival International, London; Colchester, Marcus (1986) "Banking on Disaster: International Support for the Transmigration Programme" *The Ecologist* 16 (2/3): 99-110; see also Morse, B and Berger, T (1992) *Sardar Sarovar: report of independent review* Resource Futures International, Ottawa. See also, Rich, B (1994) *Mortgaging the Earth: the World Bank, environmental impoverishment and the crisis of development* Beacon Press, Boston

¹⁴ IWGIA Yearbook 1990.

¹⁵ See also, Colchester, Marcus (1992) *The World Bank's Policies towards Tribal and Indigenous Peoples in Tropical Forests* Information circular, World Rainforest Movement, March 1992.

¹⁶ 1992 *Charter of the Indigenous-tribal Peoples of the Tropical Forests*, Article 25.

¹⁷ Under the new safeguard framework the Operational Policy (OP) sets out the requirements and binding principles. The Bank Procedures (BP) outlines the *mandatory* procedures that Bank staff must follow to apply the policy standards set out in the OP. The Sourcebook is a not mandatory, and constitutes a guidebook on good practice.

¹⁸ Gray, A, Cariño, J, Dutry, C and Trio, W (1997) *Indigenous Peoples Participation in Global Environmental Negotiations* International Alliance of Indigenous-Tribal Peoples of the Tropical Forests and European Alliance with Indigenous Peoples – Indigenous Peoples Participation in Sustainable Development No. 2, London at page 42.

¹⁹ In some cases, indigenous peoples' organisations criticised the Bank's 1998/99 consultations for lacking adequate numbers of representative indigenous leaders. See, for example, 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 page 21.

²⁰

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

²¹ Comments made by Bank staff overseeing the revision of the World Bank Indigenous Peoples Policy to NGOs (ILRC, BIC, CIEL, Oxfam, Amazon Alliance) on July 17, 2001 in Washington DC, and in a meeting with the Forest Peoples Programme in London on July 31, 2001. Support NGOs followed up these meetings with a letter to Vice-President Ian Johnson, entitled "*Request for Clarification: indigenous peoples and civil society inputs to the final round of external consultations on the revision of the World Bank's Indigenous Peoples Policy*" [letter dated 8 August 2001].

²² World Bank (2001) *World Bank Draft Indigenous Peoples Policy: Public update # 2 on consultations with external stakeholders* December 15, 2001 - at page 2, bullet point 5 - www.worldbank.org/indigenous

²³ The World Bank's final summary of the consultations did include a flow diagram setting out the process for finalising the Indigenous Peoples Policy, but this outline only set out the components of a scheduled process. It did not explain *how* or by *which mechanism* inputs by indigenous peoples and external stakeholders would (or would not) influence the contents of the final draft policy - see World Bank (2002) *Summary of consultations with external stakeholders regarding the World Bank Draft Indigenous Peoples Policy (Draft OP/BP4.10), April 18, 2002* at Annex B.

²⁴ 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 (CES) (2001) Letter sent to World Bank signed by 140 indigenous peoples' organisations, NGOs and individuals, 14 December 2001

²⁵ For example, a detailed letter sent to the Bank by the Centre for Economic and Cultural Rights (CES) of Ecuador, which questioned the consultation process and contents of the March 2001 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 CES 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 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.).

²⁶ 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.).

²⁷ 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.

²⁸ 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).

²⁹ Letter to James Wolfensohn from indigenous participants in Huejutla, Mexico, 24/11/01. See <http://www.bicusa.org/policy/IndigenousPeoples/mexico.htm>

³⁰ Joint Statement signed by Blanca Chancoso (CONAIE) and José Gregorio Diaz and María Andarcia (CONIVE) in the City of Cuzco, 23 October 2001.

³¹ 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.

³² *Statement by indigenous peoples participating in the 19th Session of the UN Working Group on Indigenous Populations about concerns regarding the revision of the World Bank's Indigenous Peoples Policy July 2001*

<http://forestpeoples.gn.apc.org/Briefings/World%20Bank/IPstatementJuly01English.htm> An analysis of the March 2001 draft OP/BP4.10 made by FPP, found that out of a total of 20 key indigenous recommendations made in 1998-99, the 2001 document had included just 2 (some measure of protection for cultural resources and inclusion of sacred lands in the policy's provisions on land and resources)). On the failure of the 2001 Draft OP4.10 to protect indigenous peoples' rights in accordance with international law, see 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. See also, MacKay, F (2002a) "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.

³³ 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.

³⁴ *Ibid.*

³⁵ 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. See also: World Bank (1996) *The World Bank Participation Sourcebook* February 1996 <http://www.worldbank.org/wbi/sourcebook/sb0002.htm> and 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.

³⁶ Letter 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

³⁷ Paradoxically, the OED review team and TOR did not ensure informed participation of indigenous representatives in the finalisation of the review and the drawing up of its recommendations to the Bank. As a result, some (though not all) of the recommendations of the OED review have been criticised by indigenous peoples' organisations as unhelpful and unacceptable (see summary report of Indigenous Peoples Roundtable, 2002. Available at: <http://www.forestpeoples.org>)

³⁸ Indigenous leader's comment to World Bank Roundtable on Draft OP/BP 4.10, October 2002. See: http://forestpeoples.gn.apc.org/Briefings/World%20Bank/wb_ip_round_table_summary_oct02_eng.htm

³⁹ Indigenous Peoples Declaration (2002e) *Indigenous Peoples' Statement to a Roundtable Discussion on the Revision of the World Bank Policy on Indigenous Peoples, 18 October 2002*, Washington, D.C

⁴⁰

http://forestpeoples.gn.apc.org/Briefings/World%20Bank/wb_ip_round_table_summary_oct02_eng.htm

⁴¹ *Report of the Permanent Forum on Indigenous Issues on its Second Session*. UN Doc. E/2003/43; E/C.19/2003/22, at para. 33.

⁴² Letter from indigenous leaders to D Freestone, World Bank legal department, 21 May 2004

⁴³ Imhof, A, Wong, S and Bosshard, P (2002) *Citizen's Guide to the World Commission on Dams* International Rivers Network (IRN), Berkeley at pages 5-7

⁴⁴ IWGIA (1999) *Dams, Indigenous Peoples and Ethnic Minorities* Indigenous Affairs No.3-4, June 1999, IWGIA and Forest Peoples Programme, Copenhagen

⁴⁵ For a thorough analysis of the successful elements in the governance, design and operation of the WCD work programme, see Dubash, N, Dupar M, Kothari, S and Lissu T (2001) *A Watershed in Global Governance? An independent assessment of the World Commission on Dams* World Resources Institute, Lokayan and Lawyer's Environmental Action Team, Delhi, Washington DC and Dar Es Salaam

⁴⁶ "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

⁴⁷ The World Bank expressed the view that it was somehow prevented from being able to 'buy in' to the WCD. However, civil society and indigenous organisations query the basis for this suggestion. Although it

is true that the World Bank and IUCN, which jointly set up the WCD, were excluded from direct participation on the team of Commissioners – as it was felt this would compromise its independence – the Bank was in no way excluded from participating in the wider WCD process. The lack of ‘buy in’ by the World Bank was in many ways self-imposed. No budgets were allocated for Bank staff to travel to WCD meetings and Bank senior management pre-judged the outcome of the Review. Some staff rejected the Commission’s draft conclusions even before the Commissioners had agreed to them.

⁴⁸ http://www.evb.ch/index.cfm?page_id=551&yy=2001

⁴⁹ World Bank (2003) *Water Resources Sector Strategy: strategic directions for World Bank engagement* World Bank, Washington, DC; See especially, Bosshard, P, Bruil, J, Horta, K, Lawrence, S and Welch, C (2003) *Gambling with People’s Lives – What the World Bank’s New High-Risk/High-Reward Strategy Means for the Poor and the Environment* Environmental Defense, Friends of the Earth, International Rivers Network, Washington, DC

⁵⁰ Colchester, M (2001) *The World Bank’s ‘Extractive Industries Review’ – A credible and independent review of world bank engagement in the mining, oil and gas sectors ? An NGO report on the Planning Workshop of the Extractive Industries Review of the World Bank held in Brussels between 28-30th October 2001* FPP briefing, Moreton-in-Marsh

⁵¹ *Subject: Civil Society Concerns Regarding Extractive Industries Review* Letter from civil society organisations to Emil Salim, 8 November, 2001

⁵² Letter from Emil Salim to Civil Society Organisations, 30 January 2002

⁵³ Colchester, M, Loreto Tamayo, A, Rovillos, R and Caruso, E (Eds)(2003) *Extracting Promises: Indigenous Peoples, Extractive Industries and the World Bank* Tebtebba Foundation and Forest Peoples Programme, Baguio

⁵⁴ Corpuz, V (2003) “Forward” at page 9-10 in Colchester, M *et al* (Eds) *op.cit.*

⁵⁵ *Striking a better balance: the World Bank Group and Extractive Industries – the final report of the EIR* Volume I, December 2003

⁵⁶ MacKay, F (2004) *Indigenous Peoples Right to Free, Prior Informed Consent and the World Bank’s Extractive Industries Review* Forest Peoples Programme, Moreton-in-Marsh

⁵⁷ *Striking a better balance: the World Bank Group and Extractive Industries – the final report of the EIR* Volume I, December 2003 at page 50.

⁵⁸ Letter from 60 indigenous peoples’ organisations and indigenous NGOs to World Bank Board of Directors, July 19, 2004

⁵⁹ See MacKay, F (2004) *Indigenous Peoples Right to Free, Prior and Informed Consent and the World Bank’s Extractive Industries Review* Forest Peoples Programme, Moreton-in-Marsh at page 24.

⁶⁰ *Ibid.*

⁶¹ Forest Peoples Programme (2005) *Critical Analysis of IFC’s Draft Performance Standard 7 on Indigenous Peoples* FPP, Moreton-in-Marsh, April 2005

⁶² 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

⁶³ Letter to James Wolfensohn and Peter Woicke. See <http://www.foei.org/ifi/ifc.html>

⁶⁴ Jenkins, B (2005) *Comments on the World Bank’s Country Systems Approach* BIC, Washington, DC. See also, MacKay, F (2005) “The Draft World Bank Operational Policy on Indigenous Peoples: progress or more of the same?” *Arizona Journal of International and Comparative Law* 22 . Moreover, the option for use of ‘country systems’ in Draft of OP 4.10 was inserted very late in the process and therefore indigenous peoples have only had the opportunity to submit written comments during the 90 day comment period initiated in December 2004. Proper space to enable a meaningful participatory discussion on country-systems and their potential role and adequacy as a framework for safeguards has not been provided.

⁶⁵ An initial examination of the Bank’s new revised policy on Indigenous Peoples adopted in May 2005 indicates that rules on indigenous peoples’ participation have been eroded as clear requirements on the need for informed participation and indigenous peoples’ participation in decision-making are now confined to a footnote (OP 4.10 footnote 4). Numerous submissions made to the World Bank by the FPP and other organisations during the policy revision process stressing the difference between “consultation” and “participation” and the need to clarify policy language, were regrettably disregarded in the final policy.

- ⁶⁶ 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
- ⁶⁷ Appendix II - Working Paper Summaries: "Participation and Indigenous Peoples" *in* World Bank (1996) *The World Bank Participation Sourcebook* www.worldbank.org/wbi/sourcebook/sba212.htm
- ⁶⁸ See, for example, Griffiths, T and Colchester, M (2000) *Indigenous Peoples, Forests and the World Bank: policies and practice* FPP, Moreton-in-Marsh. See also Griffiths, T (2005) *The GEF and Indigenous Peoples: indigenous peoples' experiences with GEF Biodiversity Projects* FPP Report, Moreton-in-Marsh
- ⁶⁹ OED (2003a) *Implementation of Operational Directive 4.20 on Indigenous Peoples: an independent desk review* January 10, 2003, Country Evaluation and Regional Relations (OEDCR), OED, Washington, DC *at* page 14 (paragraph 3.4).
- ⁷⁰ *Ibid.* *at* page 20 (paragraph 3.2.1)
- ⁷¹ OED (2003b) *Implementation of Operational Directive 4.20 on Indigenous Peoples: an evaluation of results* April 10, 2003, Country Evaluation and Regional Relations (OEDCR), OED, Washington, DC. *at* Table 2.2, page 11
- ⁷² *Ibid.* *at* page 20
- ⁷³ *Ibid.* *at* page 23
- ⁷⁴ World Bank/GEF team - PowerPoint presentation to World Conservation Congress, 2004
- ⁷⁵ Gray, A (1997) "Development Practice and Indigenous Peoples" pp.287-305 *in* Büchi, S, Erni, C, Jurt, L and Rüeg, C (Eds)(1997) *Indigenous Peoples, Environment and Development* IWGIA, Copenhagen
- ⁷⁶ See, for example, Forest Peoples Programme and Samata (2005) *Andhra Pradesh Community Forest Management Project: a preliminary independent evaluation of a World Bank forestry project* FPP, Moreton-in-Marsh – available at www.forestpeoples.org
- ⁷⁷ Griffiths, T (1999) *World Bank Projects and Indigenous Peoples in Ecuador and Bolivia* Latin America Review for the Biodiversity Support Program, Consultant Report for the Forest peoples Programme, November 1999
- ⁷⁸ Gutiérrez Laya, O (2004) *El Proyecto – Manejo de las Area Protegidas en la Amazonia Peruana por las Comunidades Nativas – un estudio de caso y evaluación independiente* Independent evaluation report <http://www.forestpeoples.org>
- ⁷⁹ See especially, Hildyard N, Hegde P, Wolverkamp P and Reddy S (1998) *Same Platform, Different train: the politics of participation* <http://www.thecornerhouse.org.uk/item.shtml?x=51958>
- ⁸⁰ Griffiths, T, Rebbapragada, R and Kalluri, B (2005) "The Great 'Community Forest Management' Swindle In India – critical evaluation of an ongoing World Bank-financed project in Andhra Pradesh" *in* *Broken Promises: how World Bank policies fail to protect forests and forest people' rights* World Rainforest Movement, FPP, RF-UK, EDF, Global Witness – see www.forestpeoples.org
- ⁸¹ Feeney, P (1999) *Accountable Aid: local participation in major projects* Oxfam, Oxford
- ⁸² OED (2003b) *op.cit.* *at* page 35 (paragraph 3.54).
- ⁸³ For a list of current World Bank projects directly targeted at indigenous peoples, see: <http://lnweb18.worldbank.org/essd/essd.nsf/28354584d9d97c29852567cc00780e2a/529a277b1d68810d852567cc0077fad3?OpenDocument> On World Bank approaches to ethnodevelopment, see Partridge WL Uquillas JE and Johns K (1996) *Including the Excluded: Ethnodevelopment in Latin America* Paper Presented to the Annual World Bank Conference on Development in Latin America and the Caribbean, Bogotá, Colombia June 30-July 2 1996; Nieuwkoop van, M and Uquillas, J (1999) *Defining Ethnodevelopment in operational terms: lessons learnt from the Ecuador-Indigenous and Afroecuadorian Peoples Development Project* ESSD, World Bank, Washington, DC;
- ⁸⁴ See, for example Macas, L (2001) Banco mundial y Prodepine: ¿hacia un neoliberalismo étnico? ICCI Boletín No.25, April, 2001. Email journal from icci@wacom.net.ec; Assies, W, van der Haar, G and Hoekema, A (Eds)(2001) *The Challenge of Diversity: indigenous peoples and the reform of the state in Latin America*. Thela-Thesis, Amsterdam. See also van den Berg, M H J (2002) *Mainstreaming Ethnodevelopment: poverty and ethnicity in World Bank policy* RISQ <http://www.risq.nl>
- ⁸⁵ See also OED (2003b) *op. Cit.* *at* page 31 (paragraph 3.4.2).

- ⁸⁶ 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
- ⁸⁷ Griffiths, T (1999) *World Bank Projects and Indigenous Peoples in Ecuador and Bolivia* Latin America Review for the Biodiversity Support Program, Consultant Report for the Forest peoples Programme, November 1999
- ⁸⁸ See, for example, Rovillos, R, Ramo, S and Corpuz, C (2003) "Philippines: when "Isles of Gold" turn to Isles of Descent" *at* pages 200-237 *in* Colchester, M *et al* (Eds)(2003) *Extracting Promises: indigenous peoples, extractive industries and the World Bank* Tebtebba Foundation and FPP, Baguio
- ⁸⁹ Griffiths, T (1999) *op. cit.*
- ⁹⁰ Feiring, B (2003) *Indigenous Peoples and Poverty: the cases of Bolivia, Guatemala, Honduras and Nicaragua* MRG International, London
- ⁹¹ Griffiths, T and Bosu Mullick S (2004) *World Bank plans for forestry project in Jharkhand State (India) continue to cause controversy* <http://www.forestpeoples.org>
- ⁹² Levett, C (2005) "Dam a watershed for World Bank: Controversy surrounds a proposed large hydro-electric project in Laos" *Sydney Morning Herald, March 25, 2005*
- ⁹³ http://siteresources.worldbank.org/INTLAOPRD/Resources/jim_chamberlain_monitoring_report_on_nt2_consultations.pdf
- ⁹⁴ Imhof, A and Lawrence, S (2005) *An Analysis of Nam Theun 2 Compliance with World Commission on Dams Strategic Priorities* International Rivers Network and Environmental Defense, Washington DC and Berkeley
- ⁹⁵ Rainforest Foundation (2004) *Stop the carve up of the Congo forests* <http://www.rainforestfoundationuk.org/s-Stop%20the%20carve%20up%20of%20the%20Congo%20forests>
- ⁹⁶ FPP letter to the President of the World Bank, expressing concern at the World Bank's failures in applying Operational Directive 4.20 in Cameroon, May 2004 www.forestpeoples.org
- ⁹⁷ *Notes of a meeting between indigenous peoples, local community representatives and the chairman of the GEF, Kuala Lumpur, 16 February 2004* FPP internal briefing.
- ⁹⁸ COPPIP (2003) "Pueblos Indígenas Piden Corte Efectivo del Proyecto del Banco Mundial" *Correo Indígena Año 2, 70, 31 October 2003*
- ⁹⁹ *Civil Society Organisations Reject World Bank Country Assistance Strategy* Press Release, New Delhi, August 10, 2004
- ¹⁰⁰ Clark, D, Fox, J and Treakle, K (Eds)(2003) *Demanding Accountability: civil society claims and the World Bank Inspection Panel* Rowman and Littlefield Publishers, Lanham *at* page 266
- ¹⁰¹ Treakle, K, Fox, J and Clark, D (2003) "Lessons Learned" *in* Clark, D, Fox, J and Treakle, K (Eds)(2003) *op. cit.* *at* pages 268-269
- ¹⁰² See, for example, *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 also Bridgeman, L (2001) "World Bank reform in the "Post Policy" Era" *Georgetown International Environmental Law Review* **1013**(2003)

A summary of indigenous peoples' experiences with participation in World Bank policy and sector review processes and in World Bank-financed projects and programmes.

This highly critical analysis examines indigenous experiences with the World Commission on Dams, the Extractive Industries Review and the seven-year-long revision of the World Bank's Operational Policy on Indigenous Peoples. Some lessons from specific World Bank projects and programmes are also discussed.

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