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Inter-American Development Bank
Indigenous Peoples and Community Development Unit

Profile

Operational Policy on Indigenous Peoples

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PROFILE

OPERATIONAL POLICY ON INDIGENOUS PEOPLES

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I. Introduction

- 1.1 The Bank's Eight Replenishment Report adopted in 1994 specifically recognizes the correlation between ethnicity and poverty, as well as the importance of the cultural and natural assets of indigenous peoples for development, and mandates the systematic inclusion of indigenous issues in Bank policies and projects (AB-1704, par. 2.27). This proactive approach complements the earlier more reactive focus on avoiding, mitigating or compensating negative impacts on vulnerable indigenous groups resulting from infrastructure projects in ecologically sensitive areas. With the specific 1994 mandate, the activities of the Bank started to raise the visibility of indigenous peoples issues and include socio-culturally appropriateness concepts in its programs in order to better address the specific needs and demands of indigenous peoples.
- 1.2 This process coincided with the growing importance of indigenous organizations in their respective countries and at the international level, contributing to the definition of important new legal and institutional frameworks to protect the rights of indigenous peoples and increase their participation in governance and development. Despite these advances, indigenous peoples continue to experience high levels of material poverty, exclusion and discrimination in access to labor markets and social services, and suffer increasing pressures on their lands and degradation of quality in their natural environments.
- 1.3 In this context, and as a result of a request by Executive Directors, the Bank initiated the preparation of a Strategic Framework on Indigenous Development, (profile approved by the Programming Committee of Management on November 26, 2003) and an Operational Policy on Indigenous Peoples. The proposed strategy and policy would establish the essential framework to incorporate lessons learned and put safeguards systematically and consistently into practice, in order to support 'development with identity' of indigenous peoples.¹

II. Proposed Policy Outline

A. Goals and Objectives

- 2.1 The goal of the policy would be to set the conditions for implementing the Mandate of the Eighth General Increase in the Resources of the Bank regarding indigenous peoples in order to: (a) **promote the development with identity of indigenous peoples** consistent with the Strategic Framework on Indigenous Development and other institutional strategies targeting or including indigenous peoples, in order to ensure social inclusion and equality of opportunity for indigenous

¹ "Development with identity" is a concept that recognizes the conditions of material poverty, inequality and exclusion of indigenous peoples, as well as the potential of their cultural, natural and social assets, with a view to increasing their access, with gender equality, to the opportunities for socioeconomic development, at the same time as strengthening their identity, culture, territoriality, natural resources and social organization, under the premise that sustainable development requires the initiative and empowerment of the beneficiaries, respect for their individual and collective rights, and the recognition that indigenous peoples' development significantly benefits society as a whole.

peoples; and (b) **safeguard indigenous peoples rights** in the context of development projects that could potentially affect them.²

B. Definition of Indigenous Peoples

2.2 The policy would include a definition of indigenous peoples based on the ILO Convention No.169 on Tribal and Indigenous Peoples in Independent Countries, Article 1, as applicable to the borrowing member countries of the Bank, and other international agreements and jurisprudence.³ Accordingly, for purposes of the policy, indigenous peoples would be defined as meeting three criteria: (a) they are descendants of populations inhabiting the region at the time of the conquest or colonization; (b) irrespective of their legal status or current residence, they retain some or all of their own social, economic, cultural and political institutions and practices; and (c) they recognize themselves as belonging to indigenous or pre-colonial peoples or cultures.

C. Scope of Application

2.3 The Policy would apply to the Inter-American Development Bank and the Multilateral Investment Fund and may also serve as a reference and benchmark for the Inter-American Investment Corporation (IIC). Activities and instruments subject to the policy would include Bank-supported operations, including financial and non-financial products. The policy would focus on the guiding principles and basic requirements the Bank should apply to promote and mainstream indigenous development, and to safeguard indigenous individual and collective rights and assets.

D. General Principles

2.4 The policy should set out key general principles that form the basis for its more specific directives. These principles would be consistent with the Eighth Capital Replenishment mandate, the agreements emanating from international fora, including the Millennium Development Goals, as well as the evolving national and international legal framework on indigenous rights. These basic principles would include:

- Acknowledgement of the numeric importance of indigenous people in the region and the consequent need to include this significant segment of the population in development decisions and benefits.
- Recognition and inclusion in discussions of development programs and projects of the different views of indigenous peoples, along with those of mainstream societies, regarding the broad goals and objectives that development should pursue.
- Documentation and analysis of the disproportionate representation of indigenous peoples among the poor and excluded.
- Recognition and protection of the rights of indigenous peoples, consistent with the legal framework of the country to lands and related natural resources, recognizing the unique relationship indigenous peoples have to these, the strong correspondence of indigenous territories with areas of sustained high biodiversity, and the need to protect these areas in a manner consistent with sustainable management objectives.
- Safeguards for the individual and collective rights of indigenous peoples as recognized in national and international law, including consideration of indigenous customs and uses,

² While recognizing that many of the provisions of the policy may also apply to other groups included in the Bank's social inclusion agenda, the rights of indigenous peoples in their condition of peoples preexisting other populations in the Americas, their cultural differentiation and the specific legal national and international instruments regarding their status legitimizes the need for a specific Bank policy on this issue.

³ Other important legal instruments on indigenous rights are documented in Annex I.

and to the evolving normative frameworks adopted by public, private, multilateral and bilateral development institutions.

- Acknowledgement of the significant natural assets, cultural heritage and social capital of indigenous peoples, and of their undervalued potential to contribute to indigenous development with identity, and to the sustainable development of the multiethnic and pluricultural societies of which indigenous peoples are part.
- Recognition of the Bank as an intergovernmental institution and therefore its privileged role in supporting governments to implement their development agendas with regard to greater inclusion and participation of indigenous peoples in democratic governance, social services and economic development and with regard to the protection of indigenous rights consistent with national and international legal frameworks, including customary law where accepted.

E. Policy Directives

2.5 The policy should contain two sets of directives aimed at achieving its fundamental objectives, by requiring the Bank to conduct its operations in a way that would take full advantage of the opportunities to mainstream indigenous development issues by supporting governments in developing approaches that include indigenous peoples and respect their rights, views and aspirations. The first set of directives would be aimed at positively seeking opportunities to include indigenous development issues in the Bank's project pipeline, when appropriate, and to support member countries in mainstreaming indigenous issues in their development agenda. The second set of directives would establish safeguards designed as a threshold of assurances to protect indigenous peoples from the potential negative impacts of Bank projects.

a. Mainstreaming Development with Identity

2.6 This set of directives would: (a) outline the types of socio-culturally appropriate operations that the Bank might support to target the development of indigenous peoples; and (b) for operations not targeting indigenous peoples but having the potential to affect them positively or in any way that is not covered by the Safeguards Section of the policy, provide guidance as to how the Bank might employ its best efforts to support governments in addressing indigenous peoples' development needs and opportunities. This might include, to the extent appropriate to each situation, measures such as the following:

1. ***Access to Social and Financial Services, Labor Markets, Economic Development and Justice.*** In Bank projects affecting or targeting indigenous peoples, the policy would encourage the inclusion of measures designed to facilitate equality of opportunity and equitable access to Bank funded services for indigenous peoples as well as project design that is socio-culturally appropriate.
2. ***Promotion of Indigenous Culture, Identity, Language and Traditional Knowledge.*** In Bank projects affecting or targeting indigenous peoples, as pertinent to each project or activity, the policy would seek to include appropriate measures in support of indigenous cultural identity and resources.
3. ***Protection and Sustainable Development of Territories, Land and Natural Resources.*** In projects that affect territories, lands and natural resources traditionally occupied by indigenous peoples, and consistent with national legislation and environmental protection objectives, the policy would seek the inclusion of actions to: (a) solve irregular land tenure situations, as well as to promote recognition of appropriate customary law and traditional knowledge and the establishment of appropriate institutional and legal

frameworks for land tenure and management; (b) ensure benefit sharing mechanisms in natural resource extraction projects; and (c) participation or co-management mechanisms for protected areas that overlap with indigenous territories.

4. ***Indigenous Peoples and Local Governance.*** The policy would encourage Bank projects that promote governance, public sector and institutional reform, particularly public finance management projects and decentralization support programs, to support government efforts to encourage appropriate participation of indigenous peoples in local governance, capacity building and decision-making.
5. ***Recognition of the unique circumstances of Indigenous Peoples in Frontier Areas.*** In regional or trans-national initiatives or operations that might affect indigenous peoples living in frontier areas, the policy would encourage recognition of the unique circumstances of these communities and address the need for their inclusion in project development.
6. ***Equal Rights and Opportunities for Indigenous Women and Gender and Generational Issues.*** In operations or activities supported by the Bank that include indigenous peoples, the policy would promote the provision of equal rights and opportunities for indigenous women and men, with due regard to the specific situation of the elderly and youth.
7. ***Poverty, Performance and Impact Indicators.*** The policy would support the development and inclusion of culturally appropriate indicators to measure the socio-economic conditions of indigenous peoples in censuses and household surveys, poverty assessments and project performance evaluation tools.

b. Safeguarding Indigenous Peoples Rights

2.7 The policy would require that the Bank conduct its operations in a way that safeguards the rights and assets of indigenous peoples and protects them individually and collectively from adverse impacts of Bank projects. For projects targeting or significantly affecting indigenous peoples, specific safeguards would include:

1. ***Identification and Mitigation of Potential Negative Impacts.*** The policy would entail early screening of projects for potential impacts on indigenous peoples at the pertinent decision points of the project cycle, so that when adverse negative impacts are anticipated, the Bank would consider this in the decision to go ahead with the project. When significant negative impacts are anticipated, socio-cultural assessments would be required to help define project alternatives to mitigate these impacts and to develop indigenous components or action plans.
2. ***Meaningful Consultation and Participation of Indigenous Stakeholders.*** The policy would provide that indigenous peoples should participate meaningfully in pertinent decisions that affect them throughout the project cycle, and should not intentionally or inadvertently be excluded from projects that have the potential to benefit them. The policy would also address consultation and participation requirements, consensus building and conflict resolution mechanisms, and will consider the principle of free, prior and informed consent of indigenous stakeholders, in a manner consistent with international agreements in this area.

3. ***Protection of Indigenous Territories, Land and Natural Resources.*** For operations that affect territories, lands and natural resources traditionally occupied and used by indigenous peoples, and consistent with national legislation regarding indigenous rights and ecosystem and land protection provisions, the policy will include safeguards for operations that affect territories, lands and natural resources traditionally occupied by indigenous peoples, such as: (a) respect for legally recognized indigenous land and resource rights with due regard to collective and customary rights; (b) implementation of management and benefit sharing or compensation mechanisms in natural resource extraction projects, when appropriate; and (c) where legal recognition or protection is insufficient, establishment of relevant restrictions to project activities and proactive action to improve the legal framework.
4. ***Avoiding Ethnically Based Discrimination.*** The policy would address discriminatory factors and barriers to entry to Bank funded activities in order to ensure that indigenous people have equal access to applicable Bank funded services.
5. ***Protection of Indigenous Culture, Identity, Language and Traditional Knowledge.*** The policy would recognize the specific socio-cultural and linguistic characteristics of indigenous peoples, seek protection of these assets, and ensure socio-culturally appropriate project design and implementation.
6. ***Protection of Uncontacted Indigenous Peoples.*** The policy would provide guidance for Bank treatment of uncontacted indigenous peoples or those in voluntary isolation. In principle, provision should be made to ensure that any forced contact can be avoided and appropriate safeguards are in place.

F. Implications for the Bank's Project Cycle

- 2.8 The policy would aim at systematically mainstreaming indigenous development needs and rights safeguards as elements to be reviewed during programming, project selection, preparation, due diligence and supervision. However, it would aim to do so by utilizing existing instruments and tools.

G. Policy Coordination

- 2.9 The application of the policy would be facilitated by the preparation of operational guidelines to assist Bank staff in further defining the mandates contained in the policy and ensuring their applicability in specific Bank operations. The Bank would publicly report its experience with the implementation of this Policy and achievement of its objectives.
- 2.10 This policy would also be applied in a manner that is consistent with all relevant Bank policies and guidelines, including the Policies on Project Operation and Approval (OP-302), Environment (in preparation), Involuntary Resettlement (OP-710), Disclosure of Information (OP-102), and Women in Development (OP-761).

III. Timeframe and Budgetary Implications

- 3.1 Once the Profile has been discussed by the Policy and Evaluation Committee of the Board, a consultation process involving governments, indigenous organizations and other civil society organizations would be conducted simultaneously with the consultation on the Strategic Framework on Indigenous Development. This consultation process would be conducted

electronically and by means of focused meetings, taking advantage of already identified events and fora, including the IDB-Civil Society meetings, the CASC meetings, and meetings at the UN Permanent Forum on Indigenous Peoples, the OAS Working Group on the Draft American Declaration on the Rights of Indigenous Peoples, the Indigenous Peoples Fund and regional indigenous organizations.

- 3.2 It is anticipated that the consultation process and the elaboration of the draft Policy and Strategic Framework to be submitted to the Policy and Evaluation Committee of the Board, will take up to 10 months after discussion of this profile by the Policy and Evaluation Committee of the Board of Executive Directors.

Background and Justification for the Policy

A. Current Situation of Indigenous Peoples

- 1.1 Despite data limitations, most sources agree that the total number of indigenous persons in Latin America comes to 40 to 50 million, or approximately 10% of the region's population, demonstrating higher than average population growth rates. In some countries such as Bolivia and Guatemala, indigenous people account for at least half of the total population. In addition to the conventional categories of indigenous peasants communities of the highlands and indigenous tribal groups of the tropical forests or semi-arid lowlands, in recent years many countries have witnessed the emergence of large numbers of indigenous peoples in urban areas, emigration to foreign countries, internal displacement due to armed conflict, and, with increased regional integration processes, the pressures on indigenous peoples whose territories straddle border areas.
- 1.2 IDB and World Bank studies as well as poverty maps in several countries show a high correlation between membership in an indigenous group and high rates of poverty as measured by conventional indicators, showing that indigenous peoples, especially indigenous women, are among the poorest and most marginalized. In addition, there is concern that the conventional indicators for measuring poverty do not reflect the indigenous view of poverty and well-being and should be supplemented by indicators that better reflect indigenous values such as the quality of the natural environment, the legal security of the territories, and the quality of the social capital of the indigenous communities and organizations.
- 1.3 There is also a high degree of correlation between the location of indigenous lands and territories and the areas with the highest rates of biodiversity and natural resource conservation. Yet, it must also be recognized that, although many traditional practices do have conservation value, others, driven by necessity or modernization, do not any more; thus the need to introduce ecosystem and land sustainability principles as a principle, in order to foster some practices while limiting others. Despite growing recognition in most countries of the rights of indigenous peoples over the lands and territories that they have traditionally occupied, land tenure insecurity continues to be a major issue as pressures mount on indigenous economies as a result of the advance of the agricultural frontiers, the exploitation of fossil fuels, the extraction of timber and non-timber forest resources, and mining, as well as the creation of roadway and energy infrastructure.

B. International and National Normative Frameworks

- 1.4 The past decades have seen the emergence of an international legal framework on the rights of indigenous peoples, including the adoption in 1989 of ILO Convention 169 on Indigenous and Tribal People in Independent countries, now ratified by 13 countries in Latin America,⁴ as well as the drafting of important new instruments such as the United Nations Declaration on the Rights of Indigenous Peoples and the OAS Draft American Declaration on the Rights of Indigenous Peoples.⁵ These instruments in turn have played an instrumental role in the adoption by many

⁴ These countries are: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, Mexico, Paraguay, Peru and Venezuela.

⁵ International legislation includes the United Nations Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the American Convention on Human Rights (1969), the International Covenant on Economic, Social and Cultural Rights (1976), the Convention on the Elimination of All Forms of Racial Discrimination (1966),

countries in the region of constitutional and legal provisions recognizing the pluriethnic and multicultural nature of their societies and the specific rights of indigenous peoples regarding territories and natural resources, customary law, identity, language and culture, and the right to autonomy in matters affecting them. The constitutions of thirteen countries in Latin America specifically recognize the rights of indigenous peoples, and most other countries have at least some legislation specific to indigenous peoples.⁶ Many international financial institutions including the World Bank Group, the Asian Development Bank, the European Commission as well as bilateral donors and the private sector, have adopted specific safeguard policies regarding indigenous peoples.⁷

C. Bank Experience

- 1.5 Although the Bank has yet to issue a policy on indigenous peoples, since 1994 with the approval of the Eighth Capital Replenishment and its specific mandate on indigenous issues, the Bank has significantly increased the number of operations that target or involve indigenous peoples. The Bank is also increasingly introducing socio-culturally appropriate measures to improve access to and quality of the services it provides to indigenous peoples, and in some areas developing highly innovative instruments and methodologies. Furthermore, the Bank has also adopted a number of internal measures to improve project quality and results in this area, including the creation of the Indigenous Peoples and Community Development Unit, and the Committee on Environmental and Social Impacts (CESI), which has institutionalized an approach to safeguards that will be codified in this policy. Moreover, in 2001, the Bank adopted an Action Plan for Combating Social Exclusion due to Race or Ethnic Background (CS-3362-3), which includes indigenous peoples as one of its target groups, reaffirming the 1994 mandates and complementing them with specific and measurable objectives and actions. Despite these advances, many weaknesses remain in terms of access and quality of Bank-funded services for indigenous peoples.⁸
- 1.6 More recently, responding to the demonstrated limitations of sectoral approaches in reaching indigenous beneficiaries and to indigenous demands for more comprehensive and participatory

the Convention on the Rights of the Child (1990); the International Labor Organization (ILO) Convention No. 107 on the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957) and Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989); Agenda 21 adopted by the United Nations Conference on Environment and Development (UNCTAD) (1992) and the International Convention on Biodiversity (1992). Other legal instruments in preparation include the United Nations draft Declaration on the Rights of Indigenous Peoples and the Draft American Declaration on the Rights of Indigenous Peoples.

⁶ Seventeen out of 19 countries with indigenous populations recognize customary law. A comprehensive overview and comparative analysis of legislation pertaining to indigenous peoples in all countries of the region has been prepared by the Bank and can be found at: www.iadb/sds/ind.

⁷ Specific policies on indigenous peoples include, among others: World Bank Policy on Indigenous Peoples, Operational Directive 4.20. 1991; World Bank Operational Directive 4.10 (Proposed Revised Policy, under consideration) 2002; Asian Development Bank. Policy on Indigenous Peoples. 1999; United National Development Programme (UNDP): Policy of Engagement. 2001; Pan American Health Organization (PAHO): Strategic Orientations for the Implementation of the Health Of The Indigenous Peoples Initiative, 1997; World Commission on Dams: Dams and Development, 2000; European Bank for Reconstruction and Development (EBRD). Mandate on Ethnic Minorities. 1993; European Union: Council Resolution on Indigenous Peoples within the Framework of the Development Cooperation of the Community and Members States, 1998; DANIDA. Danish Strategy for Support to Indigenous Peoples, 1994; German Federal Ministry for Economic Cooperation and Development: Concept for development co-operation with the indigenous peoples of Latin America. 1996; Swiss Agency for Development and Cooperation: Swiss Action for Indigenous Peoples, 1998. Agencia Española de Cooperación Internacional (AECI): Spanish Strategy for Cooperation with Indigenous Peoples, 1997. Netherlands Ministry of Foreign Affairs. Indigenous Peoples in the Netherlands Foreign Policy and Development Cooperation. 1993.

⁸ In preparation for the Strategic Framework on Indigenous Development, the Bank has been tracking the performance of Bank projects since 1990. In terms of responsiveness to indigenous issues the preliminary results of this study has found that since 1990 the number of operations that implicitly or explicitly include the indigenous population as a group targeted by investment and technical cooperation projects has increased gradually but significantly.

approaches, the Bank has begun to approve a new generation of local integrated community development projects. In these projects indigenous organizations and communities play a leading role in project design, participatory planning, decentralized implementation, and strengthening of local capabilities. This, in turn, facilitates greater ownership by the target population as well as long-term sustainability. Another lesson learned is that despite the advances in the organizational capacity of the indigenous communities and their growing presence in national politics, the role of the state in fostering indigenous development continues to be very limited.

- 1.7 These experiences of the IDB are consistent with those of other institutions, as has been documented. They confirm that more participatory approaches geared to strengthening local development opportunities and decentralized management are more effective and are only gradually coming into general use. Moreover, in light of the Bank's portfolio of infrastructure projects, it is paramount that the Bank adopt safeguards, consistent with international normative frameworks in this area, to protect the rights and interests of indigenous peoples. The proposed policy would establish the essential framework to put these lessons and safeguards systematically and consistently into practice.

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