

United Nations Permanent Forum on Indigenous Issues

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Oral intervention of Mr Suhas Chakma, Coordinator of Asian Indigenous and Tribal Peoples Network on the Agenda Item 4(a): Economic and Social Development

Thank you Mr Chairman,

I would like to take the opportunity to congratulate you and other members of the Forum. The creation of the Permanent Forum is a collective effort of many indigenous peoples and political will of many States. Mr Chairman, allow me also to take the opportunity to recognise the contribution of three distinguished representatives - Ambassador Tyge Lehmann of Denmark, the Netherlands representative, Mr Richard Van Rijn as Chairman/rapporteur of the first session of the Working Group on the possible establishment of the Permanent Forum under the Commission on Human Rights and Mr John Henriksen who incarnates himself as indigenous activist, UN official, again, indigenous activist and now reincarnated as the Norwegian representative; and one organisation - International Work Group for Indigenous Affairs (IWGIA) for making the Forum a reality.

Mr Chairman, I wanted to make this intervention on the World Bank's review of its policy on indigenous peoples, Operation Directives 4.20 (OD 4.20) as provided in the *Draft Operational Policies (OP4.10)* and the *Indigenous Peoples: Draft Bank Procedures: BP4.10*.

Mr Chairman, ideally, the revision of the OD 4.20 should have begun based on the findings of its own Operations Evaluation Department ED to enable the World Bank to learn from past practices and improve the OD 4.20. That is standard practice. But, the World Bank drafted the new policy before the OED completed the evaluation of the old policy. The World Bank has given many explanations including the preparation of a Sourcebook. But the Sourcebook serves only as a guide and not mandatory on the World Bank's staff.

The World Bank officials stated the consultation process on Draft OP/BP 4.10 would not be a "global negotiating exercise". We do not consider the World Bank to be a standard setting body. It is a BANK, Mr Chairman. However, no international agency has the prerogative of adopting a policy whose implementation promotes violation of a government's obligation under the treaties and customary international law. Rather, the United Nations Committee on Economic, Social and Cultural Rights in its General Comment No. 2 on International technical assistance measures (Article 22 of the Covenant) is unambiguous about the applicability of international human rights norms to agencies such as the World Bank.

The World Bank's Draft OP/BP 4.10 virtually encourages the borrower States to derogate from its treaty obligations. In fact, if a particular ratifying State party accepts the jurisdiction of the treaty bodies, it can be challenged in domestic court as well as before the treaty bodies - for implementing projects as provided under the World Bank's Draft Policy on Indigenous Peoples. It is a serious allegation. Mr Chair, ~~we~~ we have considered the impact of these allegations based on our detailed study of the Draft OP/BP 4.10 contained in the report titled, *World Bank Defaults on Past Promises: Why the World Bank's Draft Policy should be rejected*.

Allow me to illustrate with one example. The World Bank excludes applicability of the policy to "the groups who (a) have left their communities of origin and (b) moved to urban areas and/or migrated to obtain wage labor". It violates the Human Rights Committee's legal opinion in the case of *Sandra Lovelace Vs State of Canada* on dismembering of certain individuals from the community. The application of this policy is violates equality before law, equal protection of the law and principles of non-discrimination provided in most national constitutions. I reside in Delhi but I have lands in my hometown. If a World Bank's project affects our lands and I am excluded as per the policy of the World Bank: forget the international law, I can file a writ against the Government for violation of Article 14 of the Constitution of India. The World Bank should not promote discrimination.

Kindly allow me to draw the attention of the Forum to a few shortcomings of the World Bank's Draft Policy:

- (a) Lack of clear preconditions for project approval or rejection violates Section 9 of the OD 4.20;
- (b) Non recognition of free and prior informed consent violates CERD Committee General Comments on Indigenous peoples and judgement of Inter-American Court of Human Rights and many national courts;
- (c) Failure to recognize ownership of land rights violates the ILO Convention No 169 and national legislation like Indigenous Peoples Act of Philippines, 1997;
- (d) Failure to prohibit involuntary resettlement violates the Committee on Economic and Social and Cultural Rights General Comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant);
- (e) Lack of Indigenous Peoples Development Plan violates section 15 of OD 4.20;
- (f) No baseline study before approval of a project violates Section 16 of the OD 4.20;
- (g) No monitoring and evaluation by indigenous peoples in violation of Section 19 of the OD 4.20 makes the World bank judge and jury of itself.

Mr Chairman, the World Bank representatives stated that there might be scope for technical improvement of the Draft policy. Technical improvement should be aimed to get its "law and obligations correct" and not to promote more illegality, discrimination and violations. Permanent Forum should recommend to the World Bank to make OED findings public and then start a fresh consultation process through active participation of indigenous peoples for approval of the policy on indigenous peoples consistent with international standards.

Thank you Mr Chairperson.