

**Statement to the Third session of the UN Expert Mechanism on the Rights of
Indigenous Peoples**

Presentation under Agenda Item 4

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This intervention will focus on the implementation of the UN Declaration on the Rights of Indigenous Peoples, specifically on the responsibilities of specialized agencies of the UN in this regard under Articles 41 and 42 of the Declaration. These articles require that specialized agencies actively contribute to the realization of the Declaration, through financial support, technical assistance and promotion of the Declaration. Importantly, Article 41 of the Declaration also draws specific attention to the issue of participation, stating that “[w]ays and means of ensuring participation of indigenous peoples on issues affecting them shall be established.”

The International Finance Corporation’s (IFC) is the private sector financing arm of the World Bank Group, a UN specialized agency which also includes the International Bank for Reconstruction and Development and the International Development Agency (IBRD/IDA, more commonly referred to as the World Bank). In this context we would like to draw attention to the on-going review of the IFC’s Sustainability Policy and related Performance Standards. In particular we would like to address the following three key issues pertaining to the IFC policy and standards, (i) free, prior and informed consent, (ii) disclosure of information, and (iii) verification of categories assigned to IFC supported projects.

The issue of free, prior and informed consent has been discussed previously so we would like to make only short mention of this. The IFC has declared going into the review that their current standard of Broad Community Support is ‘functionally equivalent’ to free, prior and informed consent.¹ We reject this equivalency and call on the IFC to introduce the standard of

¹ IFC Progress Report on IFC’s Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information, Annex A (wherein the IFC states that “The emerging consensus is that the concept of consent should be defined in terms of legitimacy and transparency of process, with a desired result. The desired result should be community agreement, based on

FPIC for all projects affecting indigenous peoples, particularly those affecting the relationship between indigenous peoples and their traditional and customary lands and resources, or affecting the lands and resources directly, or involving in any way the cultural knowledge and practices of indigenous peoples.

Even the Bank's own Compliance Advisor / Ombudsman has referred to ambiguity in the IFC's "determination of BCS".² BCS removes control of the decision making process from indigenous peoples and does not require their consent. Instead it requires 'expressions of support' as evidenced by a broad array of indicators including one-to-one agreements, and agreements reached with affected households or groups. The effect is to encourage clients to gradually collect fragments of support from different quarters of the community – creating frictions and divisions with communities. The IFC is then responsible for making its own assessment of whether BCS has been obtained. BCS is therefore by definition incompatible with FPIC which is a collective right of indigenous peoples that guarantees respect for their own decision mechanisms, customary laws and practices the authority of their institutions and their right to give or withhold their collective consent in the exercise of their right to self-determination.

The issue of disclosure of information is key to ensuring that effective and empowered participation is possible. The IFC does not currently have, nor does it propose to include in the revisions to its policies, any requirement to inform indigenous peoples of the performance standards to be applied to a given project. Appropriate disclosure of information includes the provision of all relevant information to ensure that effective decision making can take place. In the context of development projects affecting indigenous peoples, this must include full disclosure of the safeguards available and a justification for the application of those safeguards. Without such information being provided, the effective participation of indigenous peoples in decision making regarding activities impacting on their lands and resources is curtailed and reduced.

existing and culturally-appropriate decision-making processes. Conceptually, there are no significant differences between consent as defined in this way, and IFC's current requirements for FPIC consultation and good faith negotiation (GFN) leading to broad community support.") See also Charles Di Leva's comments to the 9th Session of the UN Permanent Forum on Indigenous Issues, 2010, that the view of the Bank is that 'current operational policy is not out of step with the Declaration. In response, the Forum "expressed concern that its standard was "free, prior and informed consultation", rather than the "free, prior and informed consent", that indigenous peoples had fought so hard for" available at: http://presszoom.com/story_154683.html

² Office of the Compliance Advisor/Ombudsman (CAO) IFC and MIGA, World Bank Group Advisory Note 'IFC's Policy and Performance Standards on Social and Environmental Sustainability and Disclosure Policy, Commentary on IFC's Progress Report on the First 18 Months of Application' December 17, 2007

Finally, the IFC has faced a number of problems over the past few years with inaccurate classifications being placed on projects, leading to projects involving the expansion of oil palm on indigenous peoples' lands in Indonesia being classed as 'C', i.e. little to no impact. It is essential, in our view, that the categories assigned to projects impacting on indigenous peoples be verified by the people concerned or, at a minimum, are independently verified as being accurate. Without this, indigenous peoples are rendered unable to refute or reject the external assessment of development agencies as to the nature and scale of impacts of the project. This is particularly dangerous when the extent of all safeguard protections is commensurate to the scale of impact, as in the case of the IFC.

Recommendations.

To conclude we would like to make the following three recommendations to the Expert Mechanism:

Firstly that it extend detailed advice and guidance to the IFC on how the obligations of the Corporation under articles 41 and 42 can be met, in particular guidance as to how to ensure the effective participation of indigenous peoples in decision-making related to development finance and investments can be assured.

Secondly that it provide similar guidance to the IBRD and IDA (International Bank for Reconstruction and Development and the International Development Agency) in relation to the compliance of their policies with the UN DRIP, in particular the need to include the requirement to obtain indigenous peoples' FPIC.

And thirdly that it include in any follow up study on FPIC an assessment of the implementation of the World Bank's Indigenous Peoples policy in order to ensure its consistency with the provisions of the UN DRIP.

Thank you Mr Chair.