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ESCOLA DE ADMINISTRAÇÃO DE EMPRESAS DE SÃO PAULO

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**ARE MULTILATERAL DEVELOPMENT BANKS PROTECTING INDIGENOUS  
PEOPLES?  
A COMPARATIVE ANALYSIS**

SÃO PAULO  
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Thesis presented to Escola de Administração de  
Empresas de São Paulo of Fundação Getulio  
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## **ABSTRACT**

This thesis compares the stand-alone safeguard policies for indigenous peoples provided by the World Bank, the Asian Development Bank and the Inter-American Development Bank, in order to propose an indigenous peoples policy for the African Development Bank.

It starts by exposing which are indigenous peoples' rights and how different authors perceive the main document that protects such rights – the United Nations Declarations on the Rights of Indigenous Peoples. Subsequently, it discusses which is the role of Multilateral Development Bank in terms of protecting human rights, in order to understand, through a legal point of view, how the responsibilities of such institutions are regarded.

Later, the indigenous peoples safeguard policies applied by the 3 above mentioned Banks are compared within them, in order to analyze each of the topics provided by the documents and understand their similarities and differences. The inputs provided by the interviewees are highly constructive to understand some of the weaknesses incorporated not only in the policies, but in some of the Banks' mechanisms and processes.

Some of the weaknesses in the safeguards compliance and the gaps between the written policies and their implementation are also exposed. Finally, this thesis develops a proposal for a stand-alone indigenous peoples policy for the African Development Bank.

**Key words: indigenous peoples, safeguard policies, human rights, multilateral development bank, World Bank, Inter-American Development Bank, Asian Development Bank, African Development Bank**

## RESUMO

Essa tese compara as políticas de salvaguarda independentes para povos indígenas estabelecidas pelo Banco Mundial, Banco Asiático de Desenvolvimento e Banco Interamericano de Desenvolvimento, a fim de sugerir uma política dedicada aos povos indígenas para o Banco Africano de Desenvolvimento.

Inicialmente, são expostos quais são os direitos dos povos indígenas e como diferentes autores interpretam o principal documento que protege tais direitos - a Declaração das Nações Unidas sobre os Direitos dos Povos Indígenas. Posteriormente, discute qual é o papel dos Banco Multilaterais de Desenvolvimento em termos de proteção aos direitos humanos, a fim de entender, de um ponto de vista legal, como são consideradas as responsabilidades de tais instituições.

Em seguida, as políticas de salvaguardas dos povos indígenas aplicadas pelos 3 Bancos citados acima são comparadas entre si, a fim de analisar cada um dos tópicos fornecidos pelos documentos e entender suas semelhanças e diferenças. As contribuições fornecidas pelos entrevistados são valiosas para entender algumas das fraquezas incorporadas não apenas nas políticas, mas em alguns mecanismos e processos dos Bancos.

Alguns problemas no cumprimento das salvaguardas e as lacunas entre as políticas escritas e sua implementação também estão expostas. Finalmente, uma sugestão para uma política independente de povos indígenas para o Banco Africano de Desenvolvimento é desenvolvida.

**Palavras-chave:** povos indígenas, políticas de salvaguarda, direitos humanos, banco multilateral de desenvolvimento, Banco Mundial, Banco Interamericano de Desenvolvimento, Banco Asiático de Desenvolvimento, Banco Africano de Desenvolvimento.

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## ABBREVIATIONS & ACRONYMS

ADB	Asian Development Bank
AfDB	AfDB African Development Bank
CRP	Compliance Review Panel
DPI	United Nations Department of Public Information
ECOSOC	Economic and Social Council
EIB	European Investment Bank
IDB	Inter-American Development Bank
IED	Independent Evaluation Department
ILO	International Labour Organization
ILO 169	International Labor Organization Convention 169
IPP	Indigenous Peoples Plan
IPPF	Indigenous Peoples Planning Framework
MDBs	Multilateral Development Banks
NGO	Non-Governmental Organization
OPCS	Operations Policy and Country Services
SIA	Social Impact Assessment
SPS	Safeguard Policy Statement
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UN DESA	United Nations Department of Economic and Social Affairs
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNPFII	United Nations Permanent Forum on Indigenous Issues

## 1 INTRODUCTION

The indigenous peoples are among one of the most vulnerable and marginalized minority groups. There are at least 5.000 different indigenous groups, accounting for approximately 370 million people (around 5% of the world's population) who live in more than 70 countries, spread across 6 continents. (United Nations Educational, Scientific and Cultural Organisation). Two-thirds of the world's indigenous live in the Asian continent. (United Nations, 2014).

The word indigenous is an adjective that means "Originating or occurring naturally in a particular place; native". (Oxford Dictionaries). But, taking into account the enormous diversification among them, the United Nations nor any other international body have adopted a universal definition for "indigenous". Instead, the most effective way is that those who perceive themselves as indigenous have the right to self-identification as so – instead of applying some definition that would hardly be able to comprise all of those people, given their great diversity. (United Nations Permanent Forum on Indigenous Issues).

Sadly, most of the indigenous peoples have been historically excluded from the decision-making processes that affect their lands, cultures and, as a consequence, their entire lives – and so it keeps on going nowadays. Many have been marginalized and explored, facing the need of abandoning their original homes, proper identities and language. Even though, as previously stated, they represent 5% of the world's population, they are almost 15% of the world's poorest. (United Nations, 2010). Many live in precarious circumstances due to involuntary resettlement and the environmental impacts of globalization and climate change. (United Nations Educational, Scientific and Cultural Organisation).

However, it is crucial to highlight the importance they have on the world's flora and fauna: 22% of the planet's surface remains occupied by indigenous people, and nearly 80% of the Earth's remaining biodiversity are under these people's preservation. (International Labour Organization, 2017). Not to mention the linguistically richness they have to offer, as three-quarter of all the languages in the world are indigenous idioms. They possess fundamental ancestral know-how on how to comply and diminish risks from climate change and natural disasters (World Bank, 2018), and there are some clear indications that lands shielded by indigenous communities are the most effective obstacles to deforestation. (Survival International). Thus, the international community has perceived that individual and appropriate measures are needed in order to assure their rights

and preserve their unique cultures.

The Multilateral Development Banks are part of such international community that plays an important role in fostering development across the globe. However, in order to provide a sustainable development, such Banks need to ensure that the projects they finance respect indigenous peoples' rights, when indigenous' lands, culture or natural resources are at risk. Therefore, the aim of this thesis is to expose how 3 Multilateral Development Banks – the World Bank, the Asian Development Bank (ADB) and the Inter-American Development Bank (IDB) - protect indigenous peoples through a comparative analysis between their own safeguard policies dedicated to these peoples. The goal is to understand to what extent the development banks, which are meant to play a major role in ensuring indigenous' rights are being protected once the development projects they finance have an impact on this community, are actually complying with what is expected from them. As a final suggestion, this work will propose a stand-alone safeguard policy for Indigenous Peoples for the African Development Bank (AfDB).

## **2 LITERATURE REVIEW**

This chapter covers the literature that has been explored regarding indigenous peoples' rights and Multilateral Development Banks' roles and responsibilities. The aim is to provide a solid base that will further support to answer to the research question.

### **2.1 Indigenous Peoples' Rights**

Nowadays, indigenous peoples' rights are protected by 2 worldwide recognized documents: the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labor Organization Convention 169 (ILO 169). However, even covering similar rights, both of them differ deeply in terms of legal protection and States support.

The International Labor Organization (ILO) plays an important role in proposing the exclusive international treaty through the Indigenous and Tribal Peoples Convention, 1989 (No. 169). It was the first international organization to emphasize the relevance of having an international document for cooperation. It acted as a precursor of the UNDRIP, and its 44 articles were meant to ensure that Governments play their part in protecting these minorities. Unfortunately, only 22 countries have signed and ratified ILO 169 until now. Despite from being the only international law established to secure indigenous peoples' rights, its very low number of signatory States doesn't allow such instrument to achieve its full potential. Therefore, it is barely brought to discussion – making the UNDRIP the most far-reaching and essential one.

The UNDRIP was approved in 2007, by the General Assembly, having at that time the endorsement of 144 Nations – and only 11 abstentions and 4 rejections. Since then, the 4 States that vetoed the UNDRIP are now signatory, and the document is currently the most extensive global instrument to support indigenous peoples' rights (United Nations Department of Economic and Social Affairs [UN DESA], 2016), having served as a basis for regulation in individual countries. Nonetheless, unlike ILO 169, which is an international treaty and thus legally binding, the UNDRIP is not. But since it is almost universally supported, having a worldwide political commitment, it is considered the most essential framework providing native peoples minimum rights. It encompasses 46 articles dealing both with individual and collective rights, related to rights such as land, territory, health, education, language, and many more; strengthening the

importance to give indigenous peoples the right to be fully aware and involved in subjects that implicate them.

The UNDRIP represents a powerful political commitment, and has organizational structures responsible for supervising whether the provisions on it are being implemented. Those structures are the United Nations Permanent Forum on Indigenous Issues (UNPFII), a counseling body to Economic and Social Council (ECOSOC); the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), whose main responsibility is to provide research on topics regarding indigenous peoples' rights; and the Special Rapporteur on the Rights of Indigenous Peoples, who is the main figure that is in contact with all relevant stakeholders, aiming to gather informations and secure rights are being respected.

Despite the UNDRIP being a huge achievement among indigenous peoples' communities and advocates, it has not been brought to life without many disagreements and concerns. Its first draft started to be conceived in 1985 – meaning more than 20 years were necessary in order to achieve a consensus for its final adoption. The main provisions incorporated in the document, that were viewed skeptically by some countries and were thus source of disagreements, were the right to self-determination – meaning “they freely determine their political status and freely pursue their economic, social and cultural development” (UNDRIP. Art. 3); and the right to free, prior and informed consent – meaning they need to be consulted and given the right access to informations whenever external activities, such as administratives or legislatives, might directly or indirectly affect them.

Overall, all of those involved in some way with indigenous peoples' rights – Governments, civil society, native communities, private sector or scholars – have a different opinion regarding the provisions stated on the UNDRIP, in which particularities can be seen as weaknesses by some and strenghts by others, as will be later exposed through the divergent views of Prasad (2008) and Rombouts (2017).

The UNDRIP can and deserves to be seen, indeed, as a landmark when it comes to indigenous peoples' rights, once it is considered progressive for addressing certain matters. On the other hand, it also incorporates important concessions: however paradoxical it might sound, there are some restrictions within the own rights the UNDRIP comprehends (Engle, 2011). Engle argues that, by implying on the UNDRIP the right to self-determination and, mostly, by praising collective rights, the liberal human rights pattern as we know is being confronted - at the same time as it

expresses the human rights patterns' preferences for individual political and civil rights, and for shying away from solid forms of natives self-determination. In other words, for the author, the UNDRIP shows the amplification of human rights – by securing “extra” rights, tailored to indigenous peoples' singularities - , but also its restriction, once those rights have their own limitation and do not fully secure what would be expected from them, as will be exemplified below.

Within its limitation, Engle mentions some which were imposed on the rights to self-determination and to collective rights. Even though some progress were made in the protection of land rights and cultural heritage, they can be constrained due to the UNDRIP engagement to state sovereignty and to a individualistic view of human rights. When it comes to self-determination, the limitations imposed were the exclusion, on the current UNDRIP's version, of an additional provision that was written in a previous draft, which listed the areas over which native peoples would have domination: “culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members” (p. 145).

Also, it has been added to the actual version Article 46, which states that the UNDRIP does not endorse external ways of self-determination, meaning that territorial and political unity of States should always prevail. However, even though the majority of native peoples' groups do not seek for their own statehood, and also haven't looked for that over history, it was initially agreed among indigenous movements that this right would still be included in the document. However, in the final version, it has been decided to explicitly forbid it, for the sake of having some countries' approval – which demonstrates both the expansion and limitation of some rights as argued by Engle.

The UNDRIP has been, since its adoption, source of several analysis and reviews, aiming to conclude whether its provisions are powerful enough to ensure all indigenous peoples rights are protected, or if it shows some restrictions, as exposed above through Engle's observations. Taking into account that 2 decades were necessary for the UNDRIP to be approved, and that African states were, in its majority, concerned about the possibility of self-determination leading to a country's secession, it is clear that concessions were done in order for the UNDRIP to come to life – thus, the current document does not provide all the norms that would be expected if it came only from indigenous peoples and indigenous advocates point of view, and some limitations were naturally “needed” in order for it to be universally adopted.

However, even though some perspectives claim that the document is “vulnerable”, others agree that the document led to “groundbreaking” results (Davis, 2012). Literature has placed special attention to the self-determination provision: whereas Engle (2011) considers that it excludes some forms of self-determination, Barelli (2010) analyzes it as a mere consideration coming from international law, in which ethnic organizations are not allowed to claim for independence. Thus, it is not seen as a limitation, but simply as a reflection from other international legal instruments. (Davis, 2012).

When it comes to collective rights, the UNDRIP once again perceives them, as it does with self-determination. But not without limiting them. According to the UN Division for Social Policy and Development “The Declaration is the most comprehensive statement of the rights of indigenous peoples ever developed, giving prominence to collective rights to a degree unprecedented in international human rights law. The adoption of this instrument is the clearest indication yet that the international community is committing itself to the protection of the individual and collective rights of indigenous peoples”. (UN DESA, 2016). Yet, what happened with the initial collective rights designed on the first drafts of the Declaration was its decrease in terms of provisions, specially when it came to collective cultural rights, since “collective” rights include territory and resource rights – once mentioning only “individual” rights would not. Needless to say that thus collective rights menaces other interest groups access to valued land and resources. For Engle (2011) the UNDRIP clearly does not grant all the rights, meticulously detailed, that indigenous peoples deserve, but it unquestionably sets up a minimum framework to start discussions from.

The right to free, prior and informed consent is also a very praised right, as the ones discussed previously, being stated in Articles 10 and 19, among others. Article 10, for instance, recognizes that “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent”. (United Nations Declaration on the Rights of Indigenous Peoples, 2007). Nonetheless, this right can be source of contestment and different interpretations. The UNDRIP itself can be understood as only depending upon consultation of peoples, and not necessarily consent – aside from situations in which natives are compelled to relocate from their land (Philips, 2015). According to Philips (2015), the countries impose consultation through “special measures”, but consent can be interpreted as not being mandated in order to carry on with some projects that might affect indigenous peoples.

Unfortunately, after a decade of the existence of the UNDRIP, the implementation of its policies either on national or international levels are very weak. Since there is no imposition instrument that enforces its adoption, native peoples still have a long way to go in order to have their rights correctly protected (Ornelas, 2014). In contrast to Philips, Ornelas believes that the right to “free, prior and informed consent” has only one mean of interpretation, which is indeed both the consultation and consent from natives in every matter that affects them. According to Ornelas (2014), the respect to this particular right is crucial in order for the policies to be implemented, since it could deeply improve the communication and thus collaboration between Governments and indigenous communities. However, according to Ornela’s researches in Canada and the United States, developed countries with a significant number of native peoples, the lack of enforcement make this right (as many others) only available on paper. Too often indigenous’ opinions around land management are actually not even taken into account, and they find themselves being adversely impacted by those decisions – even though the UNDRIP states they should be consulted. And, although the author’s research had been conducted in the 2 above mentioned countries, the lack of commitment from Governments vis-à-vis securing the right to free, prior and informed consent can be widespread to the majority of States that are home to this minority.

In developing and underdeveloped countries, the lack of an efficient implementation process can also be seen, specially due to the exclusion and intolerance with which indigenous peoples are regarded, and that undermines the relevance of the UNDRIP. In Uganda, for instance, an indigenous community was not consulted around a mining project in their land, and even though the UNDRIP states that indigenous are entitled to benefit from development projects in their territory, they were not compensated in any way – highlighting how the document can be overlooked in many provisions. (Human Rights Watch, 2016).

One of the obstacles that prevents UNDRIP from actually being implemented, besides from the stated above, is the fact that some States don’t even recognize that indigenous peoples are entitled to have their own set of rights. The lack of free, prior and informed consent, which is also very common, as for instance in Brazil, results in negative effects such as involuntary resettlement, cultural loss and shortcoming in natural resources. (United Nations, 2017). Thus, it is clear that the fact of 144 States approving the UNDRIP in 2007 didn’t mean it would be correctly implemented – far from that.



In order for the policies to be implemented, some suggestions are given, such as the creation by each country of a UNDRIP working group that would be responsible for establishing a special department to deal with indigenous matters within the Government; and the transfer of an annual operating fund for this newly created department (Ornelas, 2014). For the author, transparency, communication and action are the key elements that lack for the so-called “UNDRIP toolkit” to be exposed and implemented into policies.

It is also interesting to highlight that the UNDRIP sets a very flexible framework for minimum rights and remedies to be interpreted – meaning its standards can be fitted according to the particular needs that each indigenous group demands, as for instance the size of a groups’ territory needs. As tribes and groups as a whole are very divergent, the document has been conceived so that Governments and indigenous peoples have the flexibility to tailor their needs according to their particularities (Prasad, 2008). For Prasad (2008), this could be the UNDRIP’s greatest power. Indeed, having just one possible solution to so many different contexts would not remediate the issues. Once again, communication and collaboration between the peoples, Governments and international bodies is crucial to articulate and implement those particular needs and ensure rights are being protected.

Nonetheless, at the same time as the UNDRIP’s flexibility can be considered its most powerful source of strength, it can also leave countries and international organizations with a way too broad scope of possibilities in terms of responsibility – which, in turn, can lead to no responsibility at all. As the UNDRIP is not legally binding, leaving too extensive ways to interpret it can be risky in the sense that Governments can take advantage of this by reading the UNDRIP in the way that suits them the most. Hence, assuming the adaptable set of standards can only be positive is delicate and does not consider the different positions and willingness each State has towards indigenous peoples.

As already mentioned before, consultation and participation rights given to indigenous in order for them to have a say in matters that affect them are among the most crucial ones within the UNDRIP. However, their adequate application into policy has been a challenge (Rombouts, 2017). The right to effective participation is so important and highlighted as it is source for another crucial right, which is self-determination. Thus, it is not only about being free to choose its own ways of living, by having access to its resources and lands, but also about participating and being consulted (Rombouts, 2017). The third major right that should be implicit when talking about the previous 2

is the right to free, prior and informed consent. However, before inserting the rights into practice, it is necessary to agree on the scope that will delimitate indigenous' participation: they need to know to which extent they can participate and have a say in matters that affect their resources and land. Contrary to the UNDRIP's flexibility that was acclaimed by Prasad (2008), Rombouts (2017) argues that such broad scope of interpretation makes the actual implementation of policies source of energetic controversy.

Once Governments, international organizations and Banks are faced to projects in which indigenous communities can be affected, they should be actively involved in understanding how the consultation rights can be implemented. In 2010, the EMRIP, together with the Special Rapporteur, started a study regarding the right to effective participation and consultation, and the outcome was that their implementation was actually not happening. As the Rapporteur commented, there was a "lack of adequate participation of indigenous peoples in the design, delivery and monitoring of programmes and policies that specifically affect them, at all levels." The study also stressed that implementation of free, prior and informed consent should involve a concrete impact in the decision-making process, and merely being involved in those processes should not be sufficient. Also, the implementation of consultation should start in the very beginning of any decision-making process – which, unfortunately, is not the case in the majority of situations (Rombouts, 2017).

Overall, the literature review regarding indigenous peoples' rights has shown that the UNDRIP is currently the most suitable instrument in terms of indigenous rights' protections, even though source of different opinions. Some agree that the policies could be stronger, whereas others affirm the problematic consists mainly on its lack of implementation. Surely, the provisions are not perfect and can be interpreted in broad ways, but they are a landmark when it comes to the protection of a historic marginalized people. Its adoption demonstrates that the voices of indigenous communities, advocates, civil society, international organization and Non-Governmental Organizations (NGOs) have been heard.

## **2.2 Multilateral Development Banks' Roles and Responsibilities**

Multilateral Development Banks (MDBs) are international financial institutions managed by States, whose goal is to contribute to the economic and social development of Nations through the borrowing of loans that will be used to implement development projects. The ultimate goal is

to alleviate poverty by financial and technical aid that take into consideration a sustainable approach – meaning future generations won't be adversely impacted by them. Therefore, in order to provide a sustainable approach, those Banks must comply with certain rules – being the most imperative ones in the environmental and social scope. These guiding standards are known as safeguards, and each MDB has its own. However, to make sure that the safeguards are being respected and implemented, and that the parties involved in any negative outcome that projects might have are held accountable is a difficult task, due to the role of law applied to Banks and their accountability mechanisms.

As a result of MDBs' economic power in financing projects related to such a wide scope of topics, that can vary from infrastructure and sanitation to education and health, and of the projects' collateral outcomes on communities and civil society in general, the matter of human rights protection has been put into question. Nonetheless, Banks' responsibility towards human rights is still very blurred and source of contestation. Pressures from NGOs and the civil society for the World Bank to include in its operations considerations regarding human rights rules have been frustrated due to the mindset that human rights are “political”, and hence don't fit legally into the Banks' Articles of Agreement, which determines its sphere of work. This means that the safeguards designed by MDBs in general don't follow international human rights standards, by only monitoring the minimum that is politically admissible among member countries (Pendergast & Kysel, 2014).

Pendergast & Kysel (2014) also discuss the accountability mechanisms provided by the Banks: how could they be more effective? For instance, by granting them more independence and according them corrective powers? Those accountability instruments were set in place primarily by the World Bank, in 1993, through its Inspection Panel, and then followed by other MDBs. The accountability mechanisms were not created due to an internal sense of necessity of transparency and being publicly accountable, but were instead pushed by NGOs and civil societies' pressure as a result of human rights' abuse among its projects. Even though the establishment of accountability mechanisms was a major sign of advance in international governance, where, for the first time, people could make international organizations accountable by charging a complaint through which the accountable organs would need to investigate if the MDBs have complied with its safeguards, those instruments are source of several weaknesses and constraints, as will be exposed below.

The above mentioned authors use as an example the Inspection Panel to demonstrate the

most important issues that hinders accountability mechanisms from exercising their full potential. Even though the World Bank's accountability instrument is taken into account, other MDBs mechanisms face similar issues. Firstly, they consider that their mandate is too narrow in the sense that, legally, they are only responsible to investigate the World Bank's execution of its own lending safeguards – and, as the safeguards are very limited and do not include solid human rights law standards, it might lead to an ineffective compliance with tight human rights rules. Secondly, the authors argue that the procedures needed to follow in order to have its complaints considered might be too elaborated for common people that are affected by the projects to deal with, as it demands a high level of familiarity with operational standards and safeguards. As a result, the know-how of external organizations are too often required in order to help with the complaint-making procedure.

Another issue that limitates the Inpection Panel's authority is the fact that is it not under its scope to offer remedies to the people injured by some projects, nor it has the power to influence the World Banks' policies in behalf of its findings. There is also a lack of independence of the accountability organ towards the Bank, since, in order to be given the right to actually conduct an inspection, it has to first communicate to the Executive Directors and the President, who, in their turn, also determine how to react to the Panel's finding proposals. In this regard, it is interesting to point out that decision-making organs are mostly "controlled" by the richest Nations, as voting rights depend on Member States financial contribution. Thus, this can generate unbalanced outcomes concerning human rights decision, recalling that, specifically in terms of indigenous peoples' rights, the richest countries were the ones who vetoed the UNDRIP. Finally, it is discussed by Pendergast & Kysel that the most probably source of critique is that the World Bank does not have any mechanism which is responsible for supervising and assessing the implementation of the Board's resolution according to the Panel's inspections.

Also, Crippa (2010) analyses the accountability mechanisms created by MDBs and goes further by demonstrating their limitations within all Banks, not specifically the World Bank. The author argues that these instruments do not counter human rights abuses not only because they don't have the legal possibility to provide remedies, but mainly because they won't benefit everyone in the given situation, but only those injured by a precise project – whereas, on the other hand, compromises taken by human rights treaty entities would give assistance to everybody in related conditions (Crippa, 2010). Further, the author continues and criticizes the fact that the inspections mechanisms are not external organs from MDBs – being, therefore, not independent

from the Banks; besides of their decisions not being legally binding. Overall, by contrasting Crippa's and Pendergast & Kysel's view, it is possible to conclude that inspection organs are very similar among Banks, sharing thus the same limitations.

Therefore, it is clear that all the above mentioned characteristics regarding the accountability mechanism makes it hard to believe they are truly holding the Banks accountable for their human rights abuses. Besides from that, the lack of precision of the MDBs' international legal obligations also influences heavily on how they approach human rights (Pendergast & Kysel, 2014). As well as States, MDBs are "international legal persons" with thus international human rights legal obligations, being requisited to recognize the minimum human rights standards showcased in international treaties, UN Charter and their member countries principles. However, when it comes to the World Bank in particular, its Articles of Agreement is superior to the international law obligations, meaning therefore that the human rights obligations' scope is unclear. As will be later exposed, it doesn't happen only with the World Bank, but with MDBs in general: they adopt their own standards of human rights, but hardly ever those established in international agreements (Crippa, 2010).

Such human rights standards adopted by the MDBs can be identified through their safeguards policies, which do not follow the international human rights standards, but what is "politically acceptable within and among an MDB's member states" (Crippa, 2010). Even though the Banks admit there is a link between the projects they finance and the possibility of human rights violations, and thus the need for them to prevent these human rights abuses, they do not see their role as to actively promote indigenous rights. This view they share on their responsibility, in addition to their legal immunity, make MDBs comfortable to determine their own interpretation of human rights.

Despite from possessing legal personality – meaning the Banks have "the capacity to make claims in respect to breaches of international law"; the "capacity to make treaties and agreements valid on the international plane"; and the "enjoyment of privileges and immunities from national jurisdiction" (Crippa, 2010, P. 3), MDBs have a passive personality under human rights law, meaning they are not subjects of international law when it comes to the matter of human rights obligations.

Some argue that the respect to such obligations could be seen as a "complementary" role for protecting human rights, and that the Bank should then act in a way that promotes its Member

States fulfilment of human rights obligations, whereas others believe the MDBs should seek a greater role in encouraging conformity with human rights obligations. Either way, for now, MDBs responsibility towards human rights are uncertain and, as a consequence, so are the “sanctions” that can be applied to them once some misconducts are perceived.

Crippa (2010) goes deeper in analysis into trying to understand the inconsistency under international law regarding direct responsibility of MDBs, since there is no legal instrument capable of holding the Banks liable for human rights infractions. Even though MDBs are required to act accordingly to their Member States’ human rights law, only countries, private companies and natural person can be liable for human rights abuses based on non conformity with human rights commitments. Therefore, when MDBs infringe human rights, the ones penalized before tribunals are the States in which the abuses were committed, since they are the ones responsible for being engaged in human rights treaties.

Head (2008) suggests that, as MDBs are not legally suitable to take part in most international treaties, as they require support only from States, MDBs should take some measures that would indeed enhance human rights protection. The author proposes 3 attitudes in this matter, starting from the Banks decision not to impose any demand on borrowing countries that would make them act in disagreement towards the treaties they are signatory of. Second, MDBs should instigate Member States to actually fully commit themselves to those treaties – by, for instance, pressing through conditionality that a State discards an import restriction that might disobey any of the rules it is signatory of. Finally, Head (2008) recommends that the MDBs’ Charters should include amendments that state important provisions contained in human rights treaties.

According to Crippa (2010), it is vital to establish new legal procedures that can be directly suitable to MDBs, so the current jurisdictional void can be filled. For now, the legal limitations imposed to MDBs come from their own constituent mechanisms, which do not encompass the most recent and accurate human rights standards. The MDBs’ human rights liability is vital for the prosperity and survival of indigenous peoples, for instance, taking the projects’ susceptible impacts on indigenous communities. Thus, operational policies need to be strengthened and the current law of responsibility that makes MDBs immune from accountability needs to be reconsidered.

It is also interesting to highlight that the establishment of other international financial institutions, such as the recent New Development Bank (also known as BRICS Bank), may inhibit the progress of human rights consideration within other MDBs’ by creating a “race to the bottom”

– meaning that, if the new bank doesn't apply solid safeguard policies to its lending procedures, other banks can feel pressured to do the same in order to be able to compete in such environment (Pendergast & Kysel, 2014).

Overall, as demonstrated, MDBs roles and responsibilities towards human rights and their operational safeguards in general are very unclear, making it hard to make limitations to their scope of work and thus their “can” and “can not” do. Therefore, even though it is morally clear how MDBs should behave towards social policies, the lack of legal procedures makes the compliance difficult. In addition, accountability mechanisms' weaknesses and limitations don't improve the global scenario.

It is important to note that the above mentioned human rights and human rights violations are directly linked to indigenous peoples rights. Indigenous peoples are entitled to both individual human rights and collective rights. The former represents all the rights enclosed in the Universal Declarations of Human Rights, and, given indigenous' marginalization, some of the provisions are particularly important, such as the right to non-discrimination and the right to political participation; and the latter represents the rights that address the community as a whole, such as the right to self-determination. (Federal Ministry for Economic Cooperation and Development, 2013). Indigenous share a very close bond with their lands, being their source of everything: culture, agriculture, health and education. However, States and private companies often do not respect the lands' demarcation, as they shelter so many precious natural resources, such as petrol and minerals, leading indigenous to be evicted from their own territories. Thus, they are exposed to human rights violations – coming not only from violent displacement without their free, prior and informed consent, but also from the fact that they are not offered adequate providing for resettlement. (United Nations Office of High Commissioner for Human Rights, 2016).

This context is against the basic human right provision of access to housing and, taking into account the fundamental importance of lands to indigenous peoples and all it provides to them, it also ends up by violating access to food, health and education. Besides, indigenous peoples face persecution, torture and even arrest when trying to protect their territories from external intrusion, in another sad exemple of human rights violations. As affirmed by the Director-General of the UN Educational, Scientific and Cultural Organization (UNESCO), “protecting their rights and dignity is protecting everyone's rights and respecting humanity's soul, past and future”. (United Nations, 2017). Hence, when indigenous' rights are violated, so are human rights.





### 3 METHODOLOGY

This thesis aims at answering “Are Multilateral Development Banks protecting indigenous peoples?”. For this purpose, a comparative analysis between the World Bank, the Asian Development Bank and the Inter-American Development Bank safeguards policies will be established, in order to better understand their similarities, differences and their real effectiveness. As a result of this analysis, a Safeguard policy for the African Development Bank will be proposed.

This topic is relevant once Multilateral Development Banks (MDBs), which are supranational institutions established by sovereign Nations, play a relevant role as financial and social actors, alongside States and other international organizations, in fostering sustainable development over the medium and long term (European Investment Bank [EIB], 2017). Besides from MDBs decisive role in displaying extensive possibilities of financing products, technical support and policy advice, their final objective is to ensure member countries are fighting against poverty and inequality through the implementation of projects financed by the banks. (UN DESA, 2016; World Bank Group, 2017). Through heavily financing infrastructure projects such as electricity and clean water supply, adequate transportation structures, and access to sanitation – just to mention a few - the lives of millions of people can be enhanced. (The Australian Government Treasury, 2014).

However, as every other loans, financing from MDBs require borrowers to follow certain procedures. In order to receive financial support from MDBs, Governments must comply with a set of safeguards: the environmental and social policies that must be followed in order to MDBs to grant loans to development projects worldwide. These policies differ between MDBs, but are essential to guarantee that the projects won't cause harm to the communities involved, by protecting their rights; and that they will not affect negatively the environment – and if they do so, for the sake of economic development, the harms will be minimized by the MDB and the local Government. Thus, by ensuring these policies, Banks can assert their commitment to sustainable development. The set of safeguards designed by the Banks are mainly divided into topics such as environment, involuntary resettlement and indigenous people.

For the purpose of this research, the analysis of indigenous peoples' safeguards was chosen in particular due to the historic marginalisation of these people, their cultural and environmental

relevance, the threat of extinction of indigenous cultures and, therefore, their need for protection.

The 3 Banks whose safeguards were compared between each other and analyzed in terms of proper indigenous peoples' rights protections have stand-alone policies for this minority since some projects performed by Governments and financed by them have an impact on indigenous communities. Most of the time they are infrastructure projects that have impacts on indigenous territories. Thus, the policies are decisive to ensure that indigenous' rights are protected under the implementation of these projects.

The World Bank, Asian Development Bank, and Inter-American Development Bank were chosen due to their critical part in supporting development: they are among the world's six biggest Multilateral Development Banks. The World Bank is the oldest and biggest one, with 189 member countries and indigenous safeguards since 1989. Its policies were used as a benchmark for the indigenous safeguards that came afterwards: in 1998, by the ADB; and in 2006, by the IDB. Taking into account the importance of the 2 latest one in their geographic scope – being the main source of financing in Asia and Latin America, the fact that the majority of indigenous are comprised between those 2 continents, and their several years of work with indigenous safeguards policies, the choice of the above mentioned banks seemed the correct one.

Considering the relevance of the role of Multilateral Development Banks in supporting development and the marginalization of indigenous peoples, the research proposition of this thesis seems pertinent. As a final addition, a Safeguard for the African Development Bank was proposed, since it is the largest source of financing in Africa but still doesn't provide stand-alone safeguards for this minority - despite some complaints of groups that are pro its creation.

In order to answer to my research question, the methodological approach chosen was the qualitative one. First, based on the literature review, points such as which are the rights of indigenous people and what are the roles/obligations of Multilateral Development Banks in terms of humans rights protection and social actors as a whole were covered, for the sake of better understanding what should be expected from the safeguards and the MDBs. Then, by doing a comparative analysis between each Banks' safeguards through the revision of publicly disposed documents, which can be found on their websites, the policies were correlated and contrasted.

The qualitative data for this research was collected through telephone or Skype interviews, since most interviewees were located in different countries. Before the interviews were held, the

written questions were sent via e-mail, so that the participants could think about them beforehand. The people chosen for the interviews are highly involved with indigenous issues in multilateral development banks: 2 of them are consultant for indigenous issues in financial institutions – World Bank and Inter-American Development Bank; one is a research fellow and international law teacher at Middlesex University, in London, and has been closely involved with indigenous organizations and communities through the UN and OECD, and has been asked to comment on the World Bank indigenous safeguards review; and the last one is the Projects and Operations Lead and Policy Advisor at Forest Peoples Programme, a British NGO that advocates for indigenous peoples' rights around the world. She has worked in public banks safeguards for about 8 years, having being involved in various reviews and also in various complaints.

The contact of such participants was obtained through internet research of people involved in this area. The research was done by accessing articles, NGOs and the Banks' and UN agencies official websites in order to make a data base of people that could be contacted. Possibly around a hundred of e-mails were sent in order to get some positive answer of people that would be willing to spend some of their time answering those questions. Out of the 4 participants, only one was obtained through a already established contact from the World Bank. The participants were asked to answer to 9 questions that involved the work of MDBs in relation to the indigenous safeguards peoples, their accountability mechanisms and indigenous peoples' rights. The questions were formulated once the literature review was done.

As this paper does a comparative analysis between the World Bank, the ADB and the IDB indigenous peoples' safeguard policies, the most suitable form of presenting it was through dividing the documents into several topics, and making a comparative table for each topic. Thus, it makes it easier to compare and highlight the Banks' differences and similarities. The text from each table was compared and, when appropriate and relevant, quotes from the interviews were added in order to bring a critical approach to the analyzed policies.

As a final step for the results gathering, reports from NGOs and UN agencies were collected in order to provide the gaps between the written safeguard policies and what has been actually done by each of the Banks, in an attempt to expose their compliance and therefore support in answering to the research question. All the reports are publicly available on each institution's website.

The safeguards proposal for the African Development Bank were recommended taking into

consideration the most complete policies from each Bank and the inputs gathered from the interviews.

## **4 RESULTS FINDINGS**

The current results aim at exposing the similarities and differences between the policies and the way the 3 Indigenous Safeguards documents are presented. For this purpose, the 3 documents have been analyzed and divided into several tables, in which it is possible to compare the particular statements and safeguards. Moreover, the 4 interviews that have been gathered play a very relevant role in bringing some understanding and criticism to the policies and the indigenous peoples matters in general. Last but not least, in section 2, the gaps in safeguards' compliance between their written policies and their real implementation have been exposed through informations released by reports from NGOs, UN agencies and from the Banks themselves, in order to present the state of compliance coming from the 3 institutions.

### **4.1 Comparative Analysis**

The set of indigenous peoples' safeguard policies designed by financial institutions and subject of this research have as a main objective to restrain and minimize injuries that can be caused to indigenous communities during the projects implementation. These policies should assist on determining which are the possible risks related to development projects and how those risks can be mitigated, through the involvement of indigenous peoples in every stage of the processes. The borrower countries must conduct a social assessment in which the positive and negative impacts on indigenous territories, culture and resources are considered; and, in order for the Bank to approve a loan for its client, there must be “free, prior an informed consultation” and “broad community support” coming from the concerned indigenous peoples (World Bank Operational Manual 4.10 – Indigenous Peoples, 2005), or, according to the ADB and IDB Safeguard policies' vocabulary, “meaningful consultation” and “broad community support”; and “preliminary consultatios” and “through a good faith negotiation process, obtained agreements”, respectively. (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, 2009; Inter-American Development Operational Policy on Indigenous Peoples, 2006).

The indigenous policies are very much alike between the 3 Banks. The current World Bank's policies, known simply as Safeguards Policies, were launched in 2005 and, even though a

new set of social and environmental policies have been approved in 2016 – the Environmental and Social Framework - they will only be adopted in projects starting from October 2018 (The World Bank). For this reason, the policies considered in this research are the ones from 2005. The Inter-American Development Bank had its Operational Policies on Indigenous Peoples approved in 2006, and the Asian Development Bank had its last Safeguard Policy Statement launched in 2009.

The reason why the safeguard policies from MDBs are, in general, very similar to each other, comes from the fact that the Banks' clients are mainly the same: Governments that seek for financial loans without having too complicated environmental and social burdens associated to them. Therefore, if the Banks' safeguards differ deeply between each other, a Government will must probably seek for a loan that comes from the institution offering the “easiest” rules. After all, it all comes down to offering competitive norms.

As it will be able to notice in the tables, more in details, the safeguard documents split their main policies and mechanisms into the Introduction/Definition; Objectives; Scope of Application; Who are “Indigenous Peoples”; Use of Country Systems; Evaluation/Screening; Consultation; Social Assessment; Consent (or Community Support); Indigenous Peoples Plan; Disclosure of Information; Special Considerations; Commercial Development of Natural and Cultural Resources; Physical Relocation of Indigenous Peoples; Grievance Mechanism and Monitoring and Reporting.

#### **4.1.1 Introduction and Definitions**

Before starting with the policies that borrowers must meet, the World Bank, the ADB and the IDB state a brief Introduction of the particular relevance of lands, natural resources and own culture to indigenous peoples, their struggle against development projects and the need for them to be included in decision-making processes that affect them. The documents highlight that indigenous are part of a minority that has been marginalized, but whose opinions and views should be taken into account. The main difference between the statements, and that is visible at first glance, is the fact that the ADB is the only document that mentions the UNDRIP. The reason for that is very straightforward: the Asian Development Bank safeguard policies are the only ones, among the 3 Banks, that have been launched after the UNDRIP was adopted (Table 1).

In spite of the World Bank and the IDB not making any reference to a document that

protects indigenous peoples rights, they do indicate the relevance of respecting indigenous culture, social and economic rights. However, such “indigenous peoples rights protection” allegation may sound as unrealistic, as, according to Tugendhat, the Banks themselves know they are not subject of international law, and consider themselves as not responsible of aligning their work with the international human rights frameworks, since their core objective, according to them, is advancing development - and not advancing the international human rights system. (H. Tugendhat, personal communication, May 1st, 2018). Tugendhat argues that this is only true to an extent: the Banks should acknowledge that they also have a responsibility in providing remedy and promotion of indigenous peoples rights – which they don’t recognize.

In addition to that, even if the policies secured by the MDBs were all correctly implemented, they would not be sufficient to guarantee indigenous’ rights. According to Doyle, the Banks’ norms don’t reflect everything in the UNDRIP and, as the human rights framework advances, the gap between them and the safeguard norms might get bigger. (C. Doyle, personal communication, May 4th, 2018). Tugendhat argues that the norms secured on the safeguard policies are not sufficient to guarantee indigenous peoples’ rights because “they are designed to be protective, to stop violation, but they are not designed to advance realization”. Furthermore, she adds that the full guarantee of indigenous peoples’ rights is a State obligation, and it doesn’t rest with the Banks – thus, safeguard policies are supportive in that battle, but they are not sufficient. (H. Tugendhat, personal communication, May 1st, 2018). Perafán agrees that mentioning the concerns with indigenous peoples rights’ on the safeguard documents doesn’t mean that, if all the policies were perfectly implemented, all rights would be covered. For him, this is precisely why the IDB has chosen to concentrate one directive of its safeguard document into proposing some pro-active policies, whose objective is to promote indigenous peoples’ rights, and not only protecting them. (C. Perafán, personal communication, May 3rd, 2018). Such “promotion” part, led only by the IDB, will be further explained.

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
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Introduction / Definitions	<p>“The Bank recognizes that the identities and cultures of Indigenous Peoples are inextricably linked to the lands on which they live and the natural resources on which they depend. These distinct circumstances expose Indigenous Peoples to different types of risks and levels of impacts from development projects, including loss of identity, culture, and customary livelihoods, as well as exposure to disease. Gender and intergenerational issues among Indigenous Peoples also are complex. As social groups with identities that are often distinct from dominant groups in their national societies, Indigenous Peoples are frequently among the most marginalized and vulnerable segments of the population. As a result, their economic, social, and legal status often limits their capacity to defend their interests in and rights to lands, territories, and other productive resources, and/or restricts their ability to participate in and benefit from development. At the same time, the Bank recognizes that Indigenous Peoples play a vital role in sustainable development and that their rights are increasingly being addressed under both domestic and international law” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.1, 2005)</p>	<p>“The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly in September 2007. Many countries in Asia and the Pacific have voted in favor of this nonbinding declaration. The Asian Development Bank (ADB) recognizes the rights of Indigenous Peoples to direct the course of their own development. Indigenous Peoples do not automatically benefit from development, which is often planned and implemented by those in the mainstream or dominant population in the countries in which they live. Special efforts are needed to engage Indigenous Peoples in the planning of development programs that affect them, in particular, development programs that are supposedly designed to meet their specific needs and aspirations. Indigenous Peoples are increasingly threatened as development programs infringe into areas that they traditionally own, occupy, use, or view as ancestral domain” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 55, 2009)</p>	<p>“Development with identity of indigenous peoples refers to a process that includes the strengthening of indigenous peoples, harmony with their environment, sound management of territories and natural resources, the generation and exercise of authority, and respect for indigenous rights, including the cultural, economic, social and institutional rights and values of indigenous peoples in accordance with their own worldview and governance. This concept rests on the principles of equity, wholeness, reciprocity, and solidarity and seeks to consolidate the conditions for indigenous peoples and their constituents to thrive and grow in harmony with their surroundings, and in so doing, tapping for that purpose, in accordance with their own priorities, the potential of their cultural heritage, natural assets, and social capital” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 5, 2006)</p>
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**Table 1: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Introduction/Definitions”**



#### 4.1.2 Objectives

All the 3 Banks agree that the main purpose of having a stand-alone indigenous peoples safeguard is to ensure that indigenous peoples' rights are fully taken into account when Banks' financing development projects might have some negative effects on indigenous culture, land or economy. The World Bank's statement regarding its objectives is shorter and very broad, whereas the ADB is more detailed by affirming that indigenous peoples should receive some "social and economic benefits" from the development projects and be able to engage in projects that have an impact in their lives. (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 55, 2009; Table 2). The IDB is the only one that mentions the word "governance", by stating that indigenous' right to decide upon their own governance is crucial – which actually means it recognizes indigenous peoples right to self-determination, that is "they freely determine their political status and freely pursue their economic, social and cultural development." (International Work Group for Indigenous Affairs, 2011).

The positive impacts of having a stand-alone indigenous peoples safeguard are unquestionable. According to Tugendhat, "if there is an independent indigenous people safeguards, then it makes it much easier for an indigenous community to understand what the framework is that a particular project has to be bound by". As Banks have multiple environmental and social safeguards on a range of issues, it can be incredibly disconcerting for a community that is trying to understand what the Government is bound to do. So, for indigenous communities and indigenous organizations, having one specific document that they can refer to gives them understanding to what are the countries' obligations towards them - and this is extremely useful, since for those policies to be enforced properly, the communities have to be aware of what they state. (H. Tugendhat, personal communication, May 1st, 2018). But Tugendhat adds that, unfortunately, "there is a gap where consultants or borrowers are not particularly good at explaining the policies from which the requirements come from".

Doyle also agrees with this view, highlighting that a stand-alone indigenous peoples safeguard is essential since it recognizes the particular rights related to these peoples, as for instance their collective rights over lands or their self-governance rights – whereas "potentially by applying the other performance standards you would be violating the rights of indigenous peoples, because it's all about individual titling to land, or one to one consultation; so there is nothing

about the collective rights and the implications of having their own Government structures, or how their particular relationship with lands is. So I think that this is essential” (C. Doyle, personal communication, May 4th, 2018).

Tugendhat mentioned that the only disadvantage she could think of is the fact that having independent indigenous peoples policies “lessens the extent to which indigenous organizations bother to look at some of the other policies” – while those policies, as for instance the use of country barrier systems, also have some considerable consequences on indigenous peoples rights. (H. Tugendhat, personal communication, May 1st, 2018).

Costa doesn’t recognize, nowadays, any disadvantage of having independent safeguard policies for indigenous peoples. However, there are many advantages according to him, and he highlights the fact that safeguards come from the need to respond to a legitimate social demand: “Pros certainly exist, as the safeguards were established due to a demand coming from the indigenous peoples themselves, some time ago, in the decade of the 80s. They felt very damaged by projects of the Bank. Thus, the safeguard responds to a demand that came from the indigenous peoples and the civil society. This is fundamental, a pro without a doubt”. (A. Costa, personal communication, May 14th, 2018).

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Objectives</b>	<p>“This policy contributes to the Bank's mission of poverty reduction and sustainable development by ensuring that the development process fully respects the dignity, human rights, economies, and cultures of Indigenous Peoples” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.1, 2005)</p>	<p>“The objective is to design and implement projects in a way that fosters full respect for Indigenous Peoples’ identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves so that they (i) receive culturally appropriate social and economic benefits, (ii) do not suffer adverse impacts as a result of projects, and (iii) can participate actively in projects that affect them” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 55, 2009)</p>	<p>“The objective of this policy is to enhance the Bank’s contribution to the development of indigenous peoples by supporting the region’s national governments and indigenous peoples in achieving the following objectives: (a) Support the development with identity of indigenous peoples, including strengthening their capacities for governance. (b) Safeguard indigenous peoples and their rights against adverse impacts and exclusion in Bankfunded development projects” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 6, 2006)</p>

**Table 2: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Objectives”**

### **4.1.3 Scope of Application**

The ADB and the IDB also provide the “Scope of Application” of their financing, whereas the World Bank doesn’t mention it. The ADB and IDB clarify that their indigenous peoples safeguard policies must be taken into consideration by all the Governments to whom both Banks have financed some projects, disregarding the form of financing that was used (Table 3).

	World Bank	Asian Development Bank	Inter-American Development Bank
Scope of Application		“The requirements apply to all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees (hereafter broadly referred to as projects). The requirements also cover actions conducted by the borrower/client in anticipation of ADB projects” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 55, 2009)	“The policy applies to the Inter-American Development Bank and the Multilateral Investment Fund. Activities and instruments subject to the present policy include all Bank-supported operations and activities, including financial and nonfinancial products” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 6, 2006)

**Table 3: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Scope of Application”**

#### 4.1.4 Who are “Indigenous Peoples”

Subsequently, the 3 institutions define who indigenous peoples are – and it is interesting to notice that the World Bank and the ADB use the same definition, which implies indigenous peoples from all over the world, whereas the IDB narrows the term to the “descendants from populations inhabiting Latin America and the Caribbean at the time of the conquest or colonization” (Inter-American Development Operational Policy on Indigenous Peoples, 2006; Table 4).

The World Bank and the ADB define indigenous peoples as those who self-identify themselves as so, share a collective connection with a particular territory, live in social and economic conditions that differ from those who come from the leading civilization, and speak an indigenous dialect. The IDB, on the other hand, broadly mentions that, besides from coming from Latin America and the Caribbean, they have their own social, economic, political, linguistic and cultural systems, and that they also self-identify themselves as indigenous. (Inter-American

Development Operational Policy on Indigenous Peoples, p. 6, 2006).

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Who are “Indigenous Peoples”</b>	<p>“For purposes of this policy, the term “Indigenous Peoples” is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:</p> <p>(a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;</p> <p>(b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories</p> <p>c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and</p> <p>(d) an indigenous language, often different from the official language of the country or region”</p> <p>(World Bank Operational Manual 4.10 – Indigenous Peoples, p.1, 2005)</p>	<p>“For operational purposes, the term Indigenous Peoples is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:</p> <p>(i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;</p> <p>(ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;</p> <p>(iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and</p> <p>(iv) a distinct language, often different from the official language of the country or region”</p> <p>(Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 56, 2009)</p>	<p>“For the purposes of this policy, the term indigenous peoples refers to those who meet the following three criteria:</p> <p>(i) they are descendants from populations inhabiting Latin America and the Caribbean at the time of the conquest or colonization;</p> <p>(ii) irrespective of their legal status or current residence, they retain some or all of their own social, economic, political, linguistic and cultural institutions and practices; and</p> <p>(iii) they recognize themselves as belonging to indigenous or pre-colonial cultures or peoples”</p> <p>(Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 5, 2006)</p>

**Table 4: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to “Who are ‘Indigenous Peoples’”**

#### **4.1.5 Use of Country Systems**

Finally, before actually entering into the matter of the policies, the 3 documents clarify that national legislation, international conventions and indigenous juridical systems can occasionally be considered instead of the safeguard policies (Table 5).

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Use of Country Systems</b>	“The Bank may decide to use a country’s systems to address environmental and social safeguard issues in a Bank-financed project that affects Indigenous Peoples. This decision is made in accordance with the requirements of the applicable Bank policy on country systems” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.2, 2005)	“In considering these characteristics (that define the term “indigenous peoples”), national legislation, customary law, and any international conventions to which the country is a party will be taken into account” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 55, 2009)	“Indigenous juridical systems will be taken into account according to the rules for their recognition established in the legislation of each country. In the absence of such rules these systems will be recognized whenever they are consistent with national legislation and do not contradict fundamental rights established in national legislation and in international norms” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 5, 2006)

**Table 5: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to the “Use of Country Systems”**

#### **4.1.6 Evaluation/Screening**

All the measures that must be held in order for the Screening and Evaluation part to be successfully concluded are very similar between the 3 Banks, but with some punctual differences that are addressed below. There is no need to go into details now regarding such measures, as they have been divided into separate tables, since each measure encompasses several actions.

The Screening and Evaluation explains that, before a project’s approval, there needs to be a screening, coming from the Bank, to see if there are indigenous peoples in the project’s area. If the answer is positive, the borrower is in charge of managing a consultation with potential impacted indigenous peoples in order to avoid or minimize unfavorable impacts that development projects might have over them. Then, once there is support from the indigenous community, the Government undertakes a Social Assessment that will estimate the positive and negative impacts of the project. Such Social Assessment is conducted by social experts, and leads to the preparation of an Indigenous Peoples Plan (IPP).

In the IDB document, what should be understood as the Social Impact Assessment – as it is named in the World Bank and ADB - is merely referred to as “evaluation”, and what should be viewed as the need to create an IPP is mentioned in a vague way by the IDB as “the Bank will require and verify that the project proponent incorporate the design and implementation of the measures necessary to minimize or prevent such adverse impacts, including consultation and good faith negotiation processes consistent with the legitimate decision-making mechanisms of affected indigenous peoples or groups, mitigation measures, monitoring, and fair compensation”. (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 8, 2006; Table 6). Therefore, even though the 3 Banks refer to very similar measures, the IDB is the only one that does not share special names to clarify them, such as Social Impact Assessment or Indigenous Peoples Plan – which probably makes it less clear for borrowers to understand what their responsibilities are at first glance.

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Evaluation/Screening</b>	<p>“For all projects that are proposed for Bank financing and affect Indigenous Peoples, the Bank requires the borrower to engage in a process of free, prior, and informed consultation.</p> <p>The Bank provides project financing only where free, prior, and informed consultation results in broad community support to the project by the affected Indigenous Peoples.</p> <p>Such Bank-financed projects include measures to (a) avoid potentially adverse effects on the Indigenous Peoples’ communities; or (b) when avoidance is not feasible, minimize, mitigate, or compensate for such effects. Bank-financed projects are also designed to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate and gender and intergenerationally inclusive.</p>	<p>“The borrower/client will undertake meaningful consultation with affected Indigenous Peoples to ensure their informed participation in (i) designing, implementing, and monitoring measures to avoid adverse impacts on them or, when avoidance is not possible, to minimize, mitigate, and compensate for such effects; and (ii) tailoring project benefits that accrue to them in a culturally appropriate manner.</p> <p>When screening by ADB confirms likely impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced experts to carry out a full social impact assessment (SIA), and if impacts on Indigenous Peoples are identified, the borrower/client will prepare an IPP in conjunction with the feasibility study. The project’s potential social impacts and risks will be assessed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to Indigenous Peoples matters, including host country obligations under international law.</p>	<p>“The Bank will require and verify that the project proponent conduct an evaluation to determine the seriousness of potential adverse impacts on physical and food security, lands, territories, resources, society, rights, the traditional economy, way of life and identity or cultural integrity of indigenous peoples, and to identify the indigenous peoples affected and their legitimate representatives and internal decision-making procedures. This evaluation will include preliminary consultations with potentially affected indigenous peoples. When potential adverse impacts are identified, the Bank will require and verify that the project proponent incorporate the design and implementation of the measures necessary to minimize or prevent such adverse impacts, including consultation and good faith negotiation processes consistent with the legitimate decision-making mechanisms of affected indigenous peoples or groups, mitigation measures, monitoring, and fair compensation.</p>

**Table 6: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Screening/Evaluation”**



	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Evaluation/ Screening</b>	<p>A project proposed for Bank financing that affects Indigenous Peoples requires: (a) screening by the Bank to identify whether Indigenous Peoples are present in, or have collective attachment to, the project area (see paragraph 8); (b) a social assessment by the borrower (see paragraph 9 and Annex A) (c) a process of free, prior, and informed consultation with the affected Indigenous Peoples' communities at each stage of the project, and particularly during project preparation, to fully identify their views and ascertain their broad community support for the project (see paragraphs 10 and 11); (d) the preparation of an Indigenous Peoples Plan (see paragraph 12 and Annex B) or an Indigenous Peoples Planning Framework (see paragraph 13 and Annex C); and</p> <p>(e) disclosure of the draft Indigenous Peoples Plan or draft Indigenous Peoples Planning Framework (see paragraph 15)"</p> <p>(World Bank Operational Manual 4.10 – Indigenous Peoples, p.2, 2005)</p>	<p>When screening by ADB confirms likely impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced experts to carry out a full social impact assessment (SIA), and if impacts on Indigenous Peoples are identified, the borrower/client will prepare an IPP in conjunction with the feasibility study. The project's potential social impacts and risks will be assessed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to Indigenous Peoples matters, including host country obligations under international law"</p> <p>(Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 56, 2009)</p>	<p>Taking into account the perspectives of indigenous peoples, the Bank will systematically perform a technical review of all operations submitted for its consideration in the programming and identification stages in order to determine whether indigenous peoples might be affected by the operation and identify potential impacts and benefits, be they direct, indirect, cumulative or regional. Depending on the nature, scope, and intensity of the impacts and benefits identified, the Bank will determine the level of analysis needed to address indigenous issues, including sociocultural analyses and consultation and good faith negotiation processes. This review will be performed by the responsible Bank division. If the project so warrants, the review will rely on experts in indigenous issues and, whenever possible, on inputs from the indigenous peoples who might be affected by the project"</p> <p>(Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 8, 2006)</p>

**Continuation of Table 6: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their "Screening/Evaluation"**

#### 4.1.7 Consultation

The World Bank and the ADB share a very similar form of stating to the borrower what makes a consultation effective. Both Banks expose in several bullets who should be included in the consultations, and how they should be conducted. They ensure that the consultation is held on a periodic basis during the project implementation, and that the social and cultural characteristics of the indigenous peoples are taken into account in order for the consultation arrangements to be done in the most fruitful way. The World Bank and the ADB state their concern that matters affecting particularly women and youth get the attention they deserve – while the World Bank also adds its concern with children, whereas ADB doesn't mention them. Both Banks also mention the importance of making the harmed indigenous peoples aware of all the phases of the project by contributing with significant informations regarding such project, in a way that indigenous peoples can understand. The ADB, contrary to the World Bank, also adds that the process of consultation “enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues. (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 56, 2009; Table 7).

The IDB, on the other hand, does not reserve, on its safeguard document, a special statement to include the several people that should be consulted and how the consultation process should be held. Instead, it mentions the need for consultation separately, several times across the document – but not consolidated around a paragraph or a section. For instance, consultation is mentioned by the IDB when it makes reference to the transborder indigenous peoples – and thus mentions the need for them to also be consulted; or when it refers broadly to the lands that could be impacted by the project operations – and therefore the need to arrange a consultation with the affected indigenous peoples. Once again, such lack of structure within its safeguard document can make IDB borrowers more confused around their responsibilities, as already mentioned before through the absence of names for certain actions – as not having a proper name for their Social Impact Assessment or Indigenous Peoples Plan, like the World Bank and the ADB have.

Costa explains that, when consultations are done, it is necessary to take into consideration the principle of proportionality, which means that projects are ranked according to their level of risk: major infrastructure projects have a higher risk than one that is driven by a community's desire

for territorial protection, for instance. “All consultations must take into account the risk proportionality, and I think this has been done, I do not see anything not being met in terms of the requirements of indigenous peoples' policies, at least in my experience”. (A. Costa, personal communication, May 14th, 2018). According to the projects’ risks, consultations will be done in more or less frequent periods.

The need for consultation with indigenous peoples, even though stated several times in all 3 documents, is a process that can be improved. Perafán claims that a better understanding of the kind of indigenous peoples involved in the projects is essential - meaning the importance of knowing and recognizing their way of government and their traditional decision-making processes in order for the consultation to be fruitful for both sides. (C. Perafán, personal communication, May 3rd, 2018). It is interesting to highlight that the IDB is the only Bank that seems to acknowledge different kind of indigenous peoples, since it is the single Bank which mentions, in its safeguard policies, the existence of “transborder indigenous peoples” and “uncontacted indigenous peoples” (Inter-American Development Operational Policy on Indigenous Peoples, p. 11, 2006).

	World Bank	Asian Development Bank	Inter-American Development Bank
Consultation	<p>“Where the project affects Indigenous Peoples, the borrower engages in free, prior, and informed consultation with them. To ensure such consultation, the borrower:</p> <p>(a) establishes an appropriate gender and intergenerationally inclusive framework that provides opportunities for consultation at each stage of project preparation and implementation among the borrower, the affected Indigenous Peoples’ communities, the Indigenous Peoples Organizations (IPOs) if any, and other local civil society organizations (CSOs) identified by the affected Indigenous Peoples’ communities;</p> <p>(b) uses consultation methods appropriate to the social and cultural values of the affected Indigenous Peoples’ communities and their local conditions and, in designing these methods, gives special attention to the concerns of Indigenous women, youth, and children and their access to development opportunities and benefits; and</p>	<p>“To carry out meaningful consultation with affected Indigenous Peoples, the borrower/client will establish a context-specific strategy for inclusive and participatory consultation, including approaches of identifying appropriate Indigenous Peoples representatives, and consultation methods appropriate to the social and cultural values of the affected Indigenous Peoples communities. The borrower/client will pay special attention to the concerns of indigenous women and youth. Meaningful consultation is a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and</p>	<p>“Indigenous culture, identity, language, and traditional knowledge. In recognition of the special sociocultural and linguistic characteristics of indigenous peoples, Bank operations will include such measures as are necessary to protect these assets from potential adverse impacts. In relevant projects, a consultation and good faith negotiation process will be used to identify the potential risks and impacts and to design and implement socioculturally appropriate measures</p> <p>Transborder indigenous peoples. In regional projects involving two or more countries or in border areas where indigenous peoples are present, the Bank will adopt such measures as are necessary to contravene adverse impacts of its projects that might affect transborder peoples.</p>

**Table 7: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Consultation”**

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
	(c) provides the affected Indigenous Peoples' communities with all relevant information about the project (including an assessment of potential adverse effects of the project on the affected Indigenous Peoples' communities) in a culturally appropriate manner at each stage of project preparation and implementation” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.2, 2005)	(v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues. Consultation will be carried out in a manner commensurate with the impacts on affected communities. The consultation process and its results will be documented and reflected in the Indigenous Peoples plan (IPP)” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 56, 2009)	These will include consultation and good faith negotiation processes, legal security and territorial control programs, and other culturally appropriate programs related to rights and priorities in health, freedom of movement, dual nationality (within the context of the applicable legal norms), and cultural, social, and economic integration between the affected peoples, among others” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 9, 2006)

**Continuation of Table 7: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Consultation”**

#### **4.1.8 Social Assessment**

Once the borrower has obtained support from the indigenous peoples communities to proceed with the project, a Social Assessment must be conducted by social experts in order to identify the positive and negative impacts that the projects will have on indigenous peoples' lives. The World Bank doesn't go deep into details about the Social Assessment, and simply asserts that the Government must provide an accurate report disclosing the conclusions of the Social Assessment. The ADB, on the other hand, states that the Social Impact Assessment, as the institution names it, must contain a “baseline socioeconomic profile of the indigenous groups in the project area and project impact zone”, determine how can indigenous peoples take advantage of social and economic services, and specify that the positive and negative effects from the projects must be considered in the short and long terms, and in their direct and indirect forms. (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 57, 2009; Table 8).

The IDB, as explained earlier, doesn't use the term Social Assessment. Instead, the institution refers to it merely as "evaluation", but specifies that such evaluation will be conducted by a social specialistst. The part of IDB's safeguard document that relates to it can be found on Table 6, associated to "Evaluation/Screening".

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Social Assessment</b>	<p>“In deciding whether to proceed with the project, the borrower ascertains, on the basis of the social assessment (see paragraph 9) and the free, prior, and informed consultation (see paragraph 10), whether the affected Indigenous Peoples’ communities provide their broad support to the project. Where there is such support, the borrower prepares a detailed report that documents:</p> <p>(a) the findings of the social assessment;</p> <p>(b) the process of free, prior, and informed consultation with the affected Indigenous Peoples’ communities</p> <p>(c) additional measures, including project design modification, that may be required to address adverse effects on the Indigenous Peoples and to provide them with culturally appropriate project benefits;</p> <p>(d) recommendations for free, prior, and informed consultation with and participation by Indigenous Peoples’ communities during project implementation, monitoring, and evaluation; and</p> <p>(e) any formal agreements reached with Indigenous Peoples’ communities and/or the IPOs”</p> <p>(World Bank Operational Manual 4.10 – Indigenous Peoples, p.3, 2005)</p>	<p>“Based on the screening, a field-based SIA will be conducted either as part of the feasibility study or as a stand-alone activity. The SIA will, in a gender-sensitive manner, in consultation with Indigenous Peoples communities, identify the project-affected Indigenous Peoples and the potential impacts of the proposed project on them. The SIA will provide a baseline socioeconomic profile of the indigenous groups in the project area and project impact zone; assess their access to and opportunities to avail themselves of basic social and economic services; assess the short- and long-term, direct and indirect, and positive and negative impacts of the project on each group’s social, cultural, and economic status; assess and validate which indigenous groups will trigger the Indigenous Peoples policy principles; and assess the subsequent approaches and resource requirements for addressing the various concerns and issues of projects that affect them” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 57, 2009)</p>	

**Table 8: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Social Assessment”**

#### 4.1.9 Consent/Community Support

After consultation with the affected indigenous peoples has been carried by the borrower, support from communities is needed in order for the project to be financed. However, each Bank has its own way of making reference to support: the World Bank refers to it through the expression “broad community support”, and the IDB uses the term “agreement” – and only mentions consent when referring to the set of directive that fosters promotion of indigenous rights, and not the one that encourages protection through safeguards. Among the 3 Banks, the word “consent” is indeed only employed by the ADB (Table 9).

However, it seems that the term consent will turn out to be the rule from now onwards. It is clearly stated on the UNDRIP Declaration that there is a need for free, prior and informed consent before enforcing any measure that could impact indigenous peoples – and the ADB is the only Bank, amidst those 3, whose current safeguard policies were implemented after the UNDRIP was approved, which probably explains its use of the term. The Environmental and Social Framework, the new set of safeguard policies from the World Bank that will be implemented in October 2018, also incorporated the term consent.

However, even though the 3 documents mention the importance of indigenous peoples giving their support in order for the project financing to happen, the truth is that consent is extremely difficult: when questioned which are the norms that are less followed among the policies for indigenous peoples, Tugendhat and Doyle agreed that consent is the sensitive one. Tugendhat argues that even though all 3 Banks require consultation, they don’t necessarily share the same point of view regarding consent and what it means. The most generally accepted view is that you must talk to indigenous peoples and consult with them – and this is well respected, according to her. However, she says that the conditions through which the consultations are arranged and implemented can vary between very good and very bad. And, when it comes to consent, it gets even more complicated: “I think in reality consent is extremely difficult - not necessarily extremely difficult to do, but is done properly very rarely” (H. Tugendhat, personal communication, May 1st, 2018).

Doyle also claims that consent is the most challenging one, and that it is not easy to get every stakeholder involved in the process to acknowledge that this is something that should be seek. For him, however, as all the norms related to indigenous peoples are inter-related, consent



cannot be seen as a stand-alone piece: for rights such as land rights, cultural rights, cultural heritage, and many others that indigenous peoples are entitled to have, in order for them to be actually respected, consent should have been given beforehand. So, by disconsidering consent in the first place, all the other rights are automatically being disrespected as well. In projects where there is a general willingness from the indigenous community for them to proceed, the respect for those rights tend to be more followed, whereas when there is opposition to the projects such rights tend to be undermined. “There has been a certain amount of consultation that has happened and there has been a certain degree of recognition of rights, but generally you find that more in the context where the people are pre disposed to the project than where they’re not” (C. Doyle, personal communication, May 4th, 2018).

Conforming to Doyle, what happens - but shouldn’t - is that indigenous peoples find themselves more often than not in a situation in which they are asked for their consent but don’t have any other option besides from giving it, since they are lacking services and support from the Government. The context around them ends up depending on that particular project, and they are not exercising consent because they actually consent with it, rather because they have no other choice. (C. Doyle, personal communication, May 4th, 2018).

Unfortunately, the inclusion of such term in the new World Bank Environmental and Social Framework doesn’t seem like it will improve much how indigenous peoples position and opinions regarding projects will be taken into account– the new set of policies restrains the occasion in which free, prior and informed consent are recommended, besides from describing the term as broadly as “collective support” (Pierce, 2016). For the position from the borrowers and the Banks regarding consent to change and for them to recognize its fundamental relevance for the respect of indigenous peoples’ rights, the merely addition of the term into safeguards documents is not enough. The pressure from communities and from the civil society is essential to keep the responsables properly progressing and asserting indigenous peoples’ rights.

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Consent/Community Support</b>	<p>“The Bank reviews the process and the outcome of the consultation carried out by the borrower to satisfy itself that the affected Indigenous Peoples’ communities have provided their broad support to the project. The Bank pays particular attention to the social assessment and to the record and outcome of the free, prior, and informed consultation with the affected Indigenous Peoples’ communities as a basis for ascertaining whether there is such support. The Bank does not proceed further with project processing if it is unable to ascertain that such support exists” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.3, 2005)</p>	<p>“For purposes of policy application, consent of affected Indigenous Peoples communities refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for the project activities listed in para. 30. Such broad community support may exist even if some individuals or groups object to the project activities. Where broad community support has been ascertained, the borrower/client will provide documentation that details the process and outcomes of consultations with Indigenous Peoples and Indigenous Peoples’ organizations, including (i) the findings of the SIA; (ii) the process of meaningful consultation with the affected Indigenous Peoples communities; (iii) the additional measures, including project design modification, that may be required to address adverse impacts on the Indigenous Peoples and to provide them with culturally appropriate project benefits; (iv) the recommendations for meaningful consultation with and participation by Indigenous Peoples communities during project implementation, monitoring, and evaluation; and (v) the content of any formal agreements reached with Indigenous Peoples communities and/or Indigenous Peoples’ organizations” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 60, 2009)</p>	<p>“For cases of particularly significant potential adverse impacts that carry a high degree of risk to the physical, territorial or cultural integrity of the affected indigenous peoples or groups, the Bank will further require and verify that the project proponent demonstrate that it has, through a good faith negotiation process, obtained agreements regarding the operation and measures to address the adverse impacts as necessary to support, in the Bank’s judgment, the sociocultural viability of the operation” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 8, 2006)</p>

**Table 9: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Consent/Community Support”**

#### **4.1.10 Indigenous Peoples Plan (IPP)**

Once the Social Impact Assessment and the consultations have been conducted, the Government needs to formulate the Indigenous Peoples Plan. The content that borrowers must provide in their IPP is exactly the same required from both the World Bank and the ADB, in which they secure that the damaged indigenous peoples will have some social and economic assistance, and that when the projects have some negative impacts on indigenous peoples such impacts will be avoided or mitigated as much as possible (Table 10).

The policy states that the IPP's level of details should be adapted according to the specificities of the project and the scope of its impact, meaning that the level of details varies according to the principle of proportionality, as already mentioned earlier and explained by Costa: if the projects is highly-risky, its IPP will need to be very precise and accurate, possibly more than a project that carries out low risk.

The IDB, as already stated before, does not mention anything about preparing a plan. Instead, the Bank broadly comments that, when negative impacts are found, the borrower needs to “incorporate the design and implementation of the measures necessary to minimize or prevent such adverse impacts”, while not giving a clear guidance on how or where such measures should be managed. (Inter-American Development Operational Policy on Indigenous Peoples, p.8, 2006).

	World Bank	Asian Development Bank	Inter-American Development Bank
IPP	<p>“On the basis of the social assessment and in consultation with the affected Indigenous Peoples’ communities, the borrower prepares an Indigenous Peoples Plan (IPP) that sets out the measures through which the borrower will ensure that (a) Indigenous Peoples affected by the project receive culturally appropriate social and economic benefits; and (b) when potential adverse effects on Indigenous Peoples are identified, those adverse effects are avoided, minimized, mitigated, or compensated for (see Annex B for details). The IPP is prepared in a flexible and pragmatic manner, and its level of detail varies depending on the specific project and the nature of effects to be addressed. The borrower integrates the IPP into the project design. When Indigenous Peoples are the sole or the overwhelming majority of direct project beneficiaries, the elements of an IPP should be included in the overall project design, and a separate IPP is not required. In such cases, the Project Appraisal Document (PAD) includes a brief summary of how the project complies with the policy, in particular the IPP requirements” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.3, 2005)</p>	<p>“If the screening and SIA indicate that the proposed project will have impacts, positive and/or negative, on Indigenous Peoples, the borrower/client will prepare an IPP in the context of the SIA and through meaningful consultation with the affected Indigenous Peoples communities. The IPP will set out the measures whereby the borrower/client will ensure (i) that affected Indigenous Peoples receive culturally appropriate social and economic benefits; and (ii) that when potential adverse impacts on Indigenous Peoples are identified, these will be avoided to the maximum extent possible. Where this avoidance is proven to be impossible, based on meaningful consultation with indigenous communities, the IPP will outline measures to minimize, mitigate, and compensate for the adverse impacts. The level of detail and comprehensiveness of IPPs (annex to this appendix) will vary depending on the specific project and the nature of impacts to be addressed. The borrower/client will integrate the elements of the IPP into the project’s design” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 57, 2009)</p>	

**Table 10: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “IPP”**

#### 4.1.11 Disclosure of Information

The World Bank and the ADB reserve a statement on their safeguard documents where

they explain the process behind the disclosure of information. Both of the Banks share a similar process, but in different sequences. The World Bank asks for its borrower to first send the Social Impact Assessment and the Indigenous Peoples Plan draft to the impacted indigenous peoples' communities, in a structure and language that they will be able to understand. Afterwards, the Government is required to send the same documents to the Bank and, once such documents are approved, the institution makes them publicly accessible, and indigenous communities also get to have the final version available according to their special needs (language/structure) (Table 11).

The ADB, on the other hand, requires the borrower to first send the reports to the Bank itself, but adds the need for the monitoring report as well – not only the Social Impact Assessment and the IPP. Then, only after the Bank approves such documents, they become publicly available to everyone, including the indigenous peoples – also properly tailored to their special needs.

The IDB, however, doesn't mention anything about making public such documents. Maybe this happens because the Bank doesn't have specific names for the documents – referring to them merely as reports, whereas the other 2 Banks, as already explained before, designate special names, such as “Social Impact Assessment” and “Indigenous Peoples Plan”. However, the IDB does mention on its policies about the disclosure of information regarding the results from the evaluations that it will conduct around the policies' implementation – whereas the other 2 Banks don't.

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Disclosure of Information</b>	<p>“The borrower makes the social assessment report and draft IPP/IPPF available to the affected Indigenous Peoples’ communities in an appropriate form, manner, and language. Before project appraisal, the borrower sends the social assessment and draft IPP/IPPF to the Bank for review. Once the Bank accepts the documents as providing an adequate basis for project appraisal, the Bank makes them available to the public in accordance with The World Bank Policy on Access to Information, and the borrower makes them available to the affected Indigenous Peoples’ communities in the same manner as the earlier draft documents” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.4, 2005)</p>	<p>“The borrower/client will submit to ADB the following documents to disclose on ADB’s website: (i) a draft IPP and/or Indigenous Peoples planning framework, including the social impact assessment, endorsed by the borrower/client, before appraisal; (ii) the final IPP upon completion; (iii) a new or updated IPP and a corrective action plan prepared during implementation, if any; and (iv) the monitoring reports. The borrower/client will provide relevant information, including information from the above documents in a timely manner, in an accessible place and in a form and language(s) understandable to the affected Indigenous Peoples and other stakeholders. If the Indigenous Peoples are illiterate, other appropriate communication methods will be used” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 58, 2009)</p>	<p>“The Bank will periodically evaluate the implementation of this policy and the achievement of its objectives through independent reviews that will include consultations with national governments, indigenous peoples, the private sector and civil society. The first evaluation will take place no later than five years from the entry into effect of the policy, with the understanding that the Administration or the Board of Executive Directors may initiate partial evaluations prior to this date. The results of the evaluations will be presented to the Board of Executive Directors and disseminated in accordance with the Bank’s Policy on Disclosure of Information (OP-102)” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 11, 2006)</p>

**Table 11: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Disclosure of Information”**

#### **4.1.12 Special Considerations**

The Special Considerations part provided on the 3 Banks documents aims at stating what are the special requirements that should be taken into consideration in case the project has an impact on the territories and natural resources of indigenous peoples. The World Bank and the ADB apply the same considerations, clarifying that borrowers should be careful about them when formulating the Social Impact Assessment and the IPP. Such considerations refer to the individual

and collective customary rights of indigenous peoples related to lands that belonged to them, or territories that they used; the importance of safeguarding indigenous' lands and natural resources in opposition to criminal invasions; the cultural appraisal that such lands and resources have for the indigenous peoples; and the indigenous peoples' natural resources management. (World Bank Operational Manual 4.10 – Indigenous Peoples, 2005; Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, 2009). The ADB, contrary to the World Bank, also adds as a special requirement the commitment to reestablish the living structure of indigenous who have been removed from their territory. (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 59, 2009; Table 12).

The IDB also mentions the specific safeguards that must be taken into account by the borrowers when their operations have an adverse impact on the lands and natural resources of indigenous peoples, however, those considerations are not the same as those indicated by the World Bank and the ADB. The IDB mentions the need for prior consultation in order to secure the cultural and economic values of the harmed indigenous peoples; instruments for the inclusion of indigenous peoples in the implementation, management and protection of the natural resources; coverage in case the indigenous peoples are harmed due to the project; and participation in the projects positive outcomes. (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 8, 2006; Table 12). It is curious that the IDB considers requirements such as the need for prior consultation or compensation for the indigenous in case they are damaged by the project as “special” ones, since such considerations are actually essential ones in the whole process of implementing a project.

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Special Considerations</b>	<p>“Indigenous Peoples are closely tied to land, forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. In this situation, when carrying out the social assessment and preparing the IPP/IPPF, the borrower pays particular attention to:</p> <p>(a) the customary rights of the Indigenous Peoples, both individual and collective, pertaining to lands or territories that they traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihoods; (b) the need to protect such lands and resources against illegal intrusion or encroachment; (c) the cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources; and (d) Indigenous Peoples’ natural resources management practices and the long-term sustainability of such practices. If the project involves</p>	<p>“Ancestral Domains and Lands and Related Natural Resources Indigenous Peoples are closely tied to land, forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. In this situation, when carrying out the social impact assessment and preparing the IPP, the borrower/client will pay particular attention to the following:</p> <p>(i) the customary rights of the Indigenous Peoples, both individual and collective, pertaining to ancestral domains, lands, or territories that they traditionally own or customarily use or occupy, and where access to natural resources is vital to the sustainability of their cultures and livelihood systems; (ii) the need to protect such ancestral domains, lands, and resources against illegal intrusion or encroachment; (iii) the cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources; (iv) the Indigenous Peoples’ natural resources management practices and the long- term sustainability of such practices; and (v) the need to rehabilitate the livelihood systems of Indigenous Peoples who have been evicted from their lands.</p>	<p>“Territories, land, and natural resources. Operations that directly or indirectly affect the legal status, possession, or management of territories, lands, or natural resources traditionally occupied or used by indigenous peoples will include specific safeguards, consistent with the applicable legal framework regarding ecosystem and land protection. One of those safeguards is respect for the rights recognized in accordance with the applicable legal norms. In projects for natural resource extraction and management and protected areas management, safeguards include: (i) prior consultation mechanisms to preserve the physical, cultural, and economic integrity of the affected peoples and the sustainability of the protected areas and natural resources; (ii) mechanisms for the participation of indigenous peoples in the utilization, administration and conservation of these resources; (iii) fair compensation for any damage these peoples might suffer as a result of the project; and (iv) whenever possible, participation in project benefits.</p>

**Table 12: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Special Considerations”**



	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
	<p>(a) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied (such as land titling projects), or (b) the acquisition of such lands, the IPP sets forth an action plan for the legal recognition of such ownership, occupation, or usage.</p> <p>Normally, the action plan is carried out before project implementation; in some cases, however, the action plan may need to be carried out concurrently with the project itself. Such legal recognition may take the following forms:</p> <p>(a) full legal recognition of existing customary land tenure systems of Indigenous Peoples; or</p> <p>(b) conversion of customary usage rights to communal and/or individual ownership rights”</p> <p>(World Bank Operational Manual 4.10 – Indigenous Peoples, p. 4, 2005)</p>	<p>If the project involves activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, such as land titling projects, or the acquisition of such lands, the borrower/client will integrate an action plan for the legal recognition of customary rights to such lands, territories, and ancestral domains in the IPP. The action plan is normally carried out before project implementation, but in some cases it may need to be formulated concurrently with the project itself. Such legal recognition may take the following forms: (i) full legal recognition of existing customary land tenure systems of Indigenous Peoples, or (ii) conversion of customary usage rights to communal and/or individual ownership rights” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 59, 2009)</p>	<p>Where legal or administrative protection is insufficient to ensure that the project will not directly or indirectly cause the deterioration of the physical integrity or legal status of the affected lands, territories or resources, the project will include the pertinent restrictions or corrective or compensatory measures”</p> <p>(Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 8, 2006)</p>

**Continuation of Table 12: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Special Considerations”**

#### **4.1.13 Commercial Development of Natural and Cultural Resources**

The World Bank and the ADB share on their safeguard documents a special section that states the informations that the borrowers must share with the indigenous peoples in the event that the project comprises the commercial development of indigenous peoples’ knowledge and cultural

and natural resources. The Government must secure that the affected indigenous are aware of their rights under customary law; the extension of the planned commercial development and those who will participate in such development; and the impacts of the development on indigenous peoples' living conditions, habitat and use of the resources. In addition, the Government must incorporate in the IPP how the commercial development will be beneficial for indigenous peoples. (World Bank Operational Manual 4.10 – Indigenous Peoples, 2005; Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, 2009; Table 13).

The IDB doesn't have a special section dedicated to that. Instead, it only states that, when there is commercial development of indigenous peoples' knowledge and cultural resources (without specifying natural resources), prior agreement will be requested from the harmed indigenous peoples, and the borrower will be responsible for stating how the indigenous will benefit from such development. (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 9, 2006; Table 13).

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Commercial Development of Natural and Cultural Resources</b>	<p>“If the project involves the commercial development of natural resources (such as minerals, hydrocarbon resources, forests, water, or hunting/fishing grounds) on lands or territories that Indigenous Peoples traditionally owned, or customarily used or occupied, the borrower ensures that as part of the free, prior, and informed consultation process the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on the Indigenous Peoples’ livelihoods, environments, and use of such resources. The borrower includes in the IPP arrangements to enable the Indigenous Peoples to share equitably in the benefits to be derived from such commercial development; at a minimum, the IPP arrangements must ensure that the Indigenous Peoples receive, in a culturally appropriate manner,</p>	<p>“If the project involves the commercial development of Indigenous Peoples’ cultural resources and knowledge, the borrower/client will ensure that the affected communities are informed of (i) their rights to such resources under statutory and customary law; (ii) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (iii) the potential effects of such development on Indigenous Peoples’ livelihoods, environment, and use of such resources. The IPP will reflect the nature and content of agreements and will include arrangements to ensure that Indigenous Peoples receive an equitable share of the benefits to be derived from such commercial development in a culturally appropriate way. Indigenous Peoples may be particularly vulnerable when project activities include (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical displacement from traditional or customary lands; and (iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial,</p>	<p>“Indigenous culture, identity, language, and traditional knowledge. In recognition of the special sociocultural and linguistic characteristics of indigenous peoples, Bank operations will include such measures as are necessary to protect these assets from potential adverse impacts. In relevant projects, a consultation and good faith negotiation process will be used to identify the potential risks and impacts and to design and implement socioculturally appropriate measures. In case of commercial development of indigenous cultural and knowledge resources, the Bank will require prior agreement by the affected peoples that includes safeguards for intellectual property and traditional knowledge, as well as provisions for their equitable participation in the benefits derived from such commercial development” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 9, 2006)</p>

**Table 13: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Commercial Development of Natural and Cultural Resources”**

Commercial Development of Natural and Cultural Resources	<p>benefits, compensation, and rights to due process at least equivalent to that to which any landowner with full legal title to the land would be entitled in the case of commercial development on their land. If the project involves the commercial development of Indigenous Peoples' cultural resources and knowledge (for example, pharmacological or artistic), the borrower ensures that as part of the free, prior, and informed consultation process, the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on Indigenous Peoples' livelihoods, environments, and use of such resources. Commercial development of the cultural resources and knowledge of these Indigenous Peoples is conditional upon their prior agreement to such development. The IPP reflects the nature and content of such agreements and includes arrangements to enable Indigenous Peoples to receive benefits in a culturally appropriate way and share equitably in the benefits to be derived from such commercial development" (World Bank Operational Manual 4.10 – Indigenous Peoples, p.4, 2005)</p>	<p>or spiritual uses that define the identity and community of Indigenous Peoples. In deciding whether to proceed with a project involving such project activities, the borrower/client will seek the consent of affected Indigenous Peoples communities. If the project involves the commercial development of natural resources (such as minerals, hydrocarbons, forests, water, or hunting or fishing grounds) within customary lands under use by Indigenous Peoples, the borrower/client will ensure that the affected communities are informed of (i) their rights to such resources under statutory and customary law; (ii) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (iii) the potential effects of such development on the Indigenous Peoples' livelihoods, environment, and use of such resources. The borrower/client will include in the IPP arrangements to enable the Indigenous Peoples to receive in a culturally appropriate manner an equitable share of the benefits to be derived from such commercial development that is at least equal to or higher than that of any other affected landowners" (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 60, 2009)</p>	
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**Continuation of Table 13: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Commercial Development of Natural and Cultural Resources”**

#### **4.1.14 Physical Relocation of Indigenous Peoples**

The Banks highly suggest that physical relocation of indigenous peoples from their lands should be avoided at the maximum extent. However, when such avoidance is impractical, the borrower will need to prepare a resettlement plan. The provisions that must be followed for the plan to be consistent are stated on the Involuntary Resettlement stand-alone policy provided by the 3 Banks, thus in a different document. Overall, the plan needs to consider indigenous peoples cultural preferences and provide a “land-based resettlement strategy”. (World Bank Operational Manual 4.10 – Indigenous Peoples, 2005; Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, 2009; Table 14).

The World Bank and the IDB, contrary to the ADB, mention on their statement that the Government must consult with indigenous peoples and obtain their agreement and broad support before the relocation process begins.

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Physical Relocation of Indigenous Peoples</b>	<p>“Because physical relocation of Indigenous Peoples is particularly complex and may have significant adverse impacts on their identity, culture, and customary livelihoods, the Bank requires the borrower to explore alternative project designs to avoid physical relocation of Indigenous Peoples. In exceptional circumstances, when it is not feasible to avoid relocation, the borrower will not carry out such relocation without obtaining broad support for it from the affected Indigenous Peoples’ communities as part of the free, prior, and informed consultation process. In such cases, the borrower prepares a resettlement plan in accordance with the requirements of OP 4.12, <i>Involuntary Resettlement</i>, that is compatible with the Indigenous Peoples’ cultural preferences, and includes a land-based resettlement strategy. As part of the resettlement plan, the borrower documents the results of the consultation process. Where possible, the resettlement plan should allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist.” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.5, 2005)</p>	<p>“The borrower/client will explore to the maximum extent possible alternative project designs to avoid physical displacement of Indigenous Peoples that will result in adverse impacts on their identity, culture, and customary livelihoods. In exceptional circumstances, when avoidance is impossible, the borrower/client will prepare an IPP that could be combined with a resettlement plan. Such a combined plan needs to be compatible with the Indigenous Peoples’ cultural preferences and will include a land-based resettlement strategy. Where possible, the plan will allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned or customarily used or occupied if the reasons for their relocation cease to exist. The plan should include provisions to rehabilitate such lands, if needed” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 61, 2009)</p>	<p>“For cases of particularly significant potential adverse impacts that carry a high degree of risk to the physical, territorial or cultural integrity of the affected indigenous peoples or groups, the Bank will further require and verify that the project proponent demonstrate that it has, through a good faith negotiation process, obtained agreements regarding the operation and measures to address the adverse impacts as necessary to support, in the Bank’s judgment, the sociocultural viability of the operation” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 8, 2006)</p>

**Table 14: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Physical Relocation of Indigenous Peoples”**

#### **4.1.15 Indigenous Peoples and Development**

The “Indigenous Peoples and Development” section aims at financially helping borrowers in different ways and levels, such as intensifying local legislation; supporting development

programs; helping to overcome concerns related to gender and to include the particular matters of women, children and youth; promoting collaboration between indigenous peoples organizations, the civil society and the private corporations that would enhance the fights for indigenous peoples inclusion; and many others (Table 15).

The IDB is the only one, among the 3 Banks, that also mentions a commitment to the propagation of indigenous battles and concerns among the whole Bank and Latin America in general, in a clear attempt to legitimize indigenous peoples matters. It states that “The Bank will implement dissemination and training measures to raise awareness of indigenous issues within the institution and in the region, and to improve the degree of knowledge and sensitivity of its staff and local counterparts with regard to indigenous peoples” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 11, 2006). The willingness to disseminate such awareness not only gives more credibility to indigenous concerns and therefore more sensitivity towards their problems, but also can enhance the way people from other departments of the Bank see those working with safeguards for indigenous peoples. Tugendhat affirms that the status of the safeguard specialist within the World Bank and the ADB is not as well respected as it should be, once the central philosophy of the Banks is to make sure that the money continues to flow, and imposing the safeguards can sometimes be seen as a delay in the progress of the project. Therefore, safeguard consultants can be regarded as the responsables for lagging the whole process. (H. Tugendhat, personal communication, May 1st, 2018).

Tugendhat affirms that the beneficial outcomes of coordinating trainings and boosting awareness about indigenous issues among the institutions could also result in an improvement in staff incentives, through promoting and respecting the role of safeguard specialists more strongly in flagging problems. And such change in staff incentives could lead to a better monitoring process, since the encouragement and respect towards consultants would bring better prepared specialists for such roles. (H. Tugendhat, personal communication, May 1st, 2018).

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Indigenous Peoples and Development</b>	<p>“In furtherance of the objectives of this policy, the Bank may, at a member country’s request, support the country in its development planning and poverty reduction strategies by providing financial assistance for a variety of initiatives designed to:</p> <p>(a) strengthen local legislation, as needed, to establish legal recognition of the customary or traditional land tenure systems of Indigenous Peoples;</p> <p>(b) make the development process more inclusive of Indigenous Peoples by incorporating their perspectives in the design of development programs and poverty reduction strategies, and providing them with opportunities to benefit more fully from development programs through policy and legal reforms, capacity building, and free, prior, and informed consultation and participation;</p> <p>(c) support the development priorities of Indigenous Peoples through programs (such as community-driven development programs and locally managed social funds) developed by governments in cooperation with Indigenous Peoples;</p>	<p>“In furtherance of the objectives to benefit Indigenous Peoples, developing member countries can ask ADB to support them in their development planning and poverty reduction strategies by providing financial assistance for a variety of initiatives, such as the following:</p> <p>(i) strengthen local legislation to establish legal recognition of the customary or traditional land tenure systems of Indigenous Peoples;</p> <p>(ii) enhance participation by Indigenous Peoples in the development process by incorporating their perspectives into the design of development programs and poverty reduction strategies and providing them with opportunities to benefit more fully from development programs through policy and legal reforms, capacity building, and meaningful consultations, participation, and empowerment;</p> <p>(iii) support the development priorities of Indigenous Peoples through programs developed by governments in cooperation with Indigenous Peoples;</p>	<p>“The Bank will implement the necessary measures to eliminate the barriers to entry faced by indigenous peoples and, whenever technically viable and feasible, will ensure equality of conditions for indigenous participation as direct beneficiaries, permanent staff, and suppliers of goods and services in Bank-financed contracts. Such measures will be consistent with the Bank’s procurement norms and may include special instruments and procedures designed to identify and implement eligibility criteria and simplified, differentiated procedures in line with the particular characteristics of indigenous candidates, information and training programs, and other appropriate measures.</p> <p>The Bank will implement dissemination and training measures to raise awareness of indigenous issues within the institution and in the region, and to improve the degree of knowledge and sensitivity of its staff and local counterparts with regard to indigenous peoples” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 11, 2006)</p>

**Table 15: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Indigenous Peoples and Development”**



	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Indigenous Peoples and Development</b>	<p>(d) address the gender and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children;</p> <p>(e) prepare participatory profiles of Indigenous Peoples to document their culture, demographic structure, gender and intergenerational relations and social organization, institutions, production systems, religious beliefs, and resource use patterns;</p> <p>(f) strengthen the capacity of Indigenous Peoples' communities and IPOs to prepare, implement, monitor, and evaluate development programs;</p> <p>(g) strengthen the capacity of government agencies responsible for providing development services to Indigenous Peoples;</p> <p>(h) protect indigenous knowledge, including by strengthening intellectual property rights; and</p> <p>(i) facilitate partnerships among the government, IPOs, CSOs, and the private sector to promote Indigenous Peoples' development programs"</p> <p>(World Bank Operational Manual 4.10 – Indigenous Peoples, p.5, 2005)</p>	<p>(iv) address the gender and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children;</p> <p>(v) prepare participatory profiles of Indigenous Peoples to document their culture, demographic structure, gender and intergenerational relations, and social organization, institutions, production systems, religious beliefs, and resource use patterns;</p> <p>(vi) strengthen the capacity of Indigenous Peoples communities and Indigenous Peoples' organizations to prepare, implement, monitor, and evaluate development programs;</p> <p>(vii) strengthen the capacity of government agencies responsible for providing development services to Indigenous Peoples;</p> <p>(viii) preserve and respect indigenous knowledge, including strengthening intellectual property rights; and</p> <p>(ix) facilitate partnerships among the government, Indigenous Peoples' organizations, civil society organizations, and the private sector to promote Indigenous Peoples' development programs"</p> <p>(Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 61, 2009)</p>	

**Continuation of Table 15: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Indigenous Peoples and Development”**

#### 4.1.16 Grievance Redress Mechanism

Even though the 3 Banks possess a complaint mechanism, only the World Bank and the ADB make express mention of them in their safeguard documents. The World Bank is brief in mentioning it on one of its annexes, by only stating it is an accessible instrument where harmed indigenous peoples can make their complaint. The ADB, on the other hand, mentions that the process involving the use of the grievance instrument will be a transparent one, “that is culturally appropriate, gender responsive, and accessible to the affected Indigenous Peoples communities at no cost and without retribution”. (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p.58, 2009). Also, the ADB adds that the damaged communities will be correctly informed about such instrument (Table 16).

However, it doesn't seem to be as simple for indigenous peoples to make a grievance. Tugendhat argues that often complaints take too much time until they are officially taken into account by the Banks: “it takes so long for communities to realize the extent of human rights violations, to do the research necessary, and to find the allies needed to make the complaint”. (H. Tugendhat, personal communication, May 1st, 2018). By “allies” Tugendhat means the people with whom the indigenous peoples can count on to help them place a formal complaint. As also mentioned by Doyle, the local communities have to rely on NGOs to help them during the process, as these organizations have specialists and the financial and time capacity to do so. The way the performance standard is structured and worded is too complex for the vast majority of indigenous peoples to understand. In addition, most don't have the required knowledge to formally write a complaint that will address a specific standard. (C. Doyle, personal communication, May 4th, 2018).

The grievance mechanisms are directly linked with the accountability mechanisms, which are essential to bring public the performance of the borrowers - and consequently the conduct of the Banks - while the projects are being implemented. Even though those mechanisms are not mentioned in the safeguards, as they are evidently not policies, it is interesting to point them out given their importance. Tugendhat argues that those mechanisms are capable of doing some very innovative and good assessments of the issues that have been met, but they are not entirely separated from the politics of the institutions. In the case of the World Bank, for instance, the Inspection Panel - as their accountability mechanism is known – has very weak powers of

enforcement, she explains. Once the violation has been investigated and a report about it has been issued, the Board comes out with a management response – which, in most of the cases, argues that the Panel didn't fully understand the issues and brought some false informations. But, in cases it does recognize indigenous rights violations, the management Board might suspend financing or conceive an action plan to address the results of the violations. However, the action plan needs to be implemented by the Government itself, without any financial aid coming from the Banks – but the Banks can't enforce borrowers to do such thing. Thus, it can come to a stand, specially when the project has already been closed. (H. Tugendhat, personal communication, May 1st, 2018). Generally a complaint about a specific project is raised near to the end of a project's life, and it takes years between the start of a project and the final report released by the accountability mechanism.

Doyle agrees that the accountability mechanisms do have a critical approach towards the Banks' actions, pointing out findings regarding their inadequacy of compliance when it exists, but that their lack of enforcement power and the fact that they have no influence over the borrowers – being only responsible for checking that the Banks' staff are ensuring that the borrower complies with the safeguards, and not having a directly approach with the borrowers – weakens the mechanism. (C. Doyle, personal communication, May 4th, 2018). Perafán, on the other hand, claims that the accountability mechanism provided by the IDB is very efficient when it comes to guarantee that violations are indeed being investigated. According to him, the Bank has very professional people working inside such mechanism - which in the IDB is known as the Independent Consultation and Investigation Mechanism. The reason why the issues are truly and effectively investigated comes to the fact that “it is an instrument completely independent from the Bank, meaning that nobody at the management of the Bank has any power over these people. (C. Perafán, personal communication, May 3rd, 2018). However, Perafán adds that the weak part inside this “equation” is the demand part: not necessarily everyone is aware about such instrument, besides from not being fully able or trained to lodge a formal complaint, which needs to be done through a computer – definitely not part of the majority of indigenous peoples daily life. According to him, for the accountability mechanism to be more efficient, more outreach should be given to the communities, so they feel more included in the process and thus empowered to give their inputs. (C. Perafán, personal communication, May 3rd, 2018).

Costa explains that there are complaint mechanisms at the project level, and at the Bank

level: “in terms of accountability there are some solid channels that are developing - more robust ones and I believe more effective as well. So it is about solving the issues before they become a problem. This is the direction we have to take: to safeguard is to prevent problems from occurring”. (A. Costa, personal communication, May 14th, 2018).

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Grievance Redress Mechanism</b>	<p>“OP 4.10, Annex B</p> <p>The IPP includes the following elements, as needed:</p> <p>(h) Accessible procedures appropriate to the project to address grievances by the affected Indigenous Peoples' communities arising from project implementation. When designing the grievance procedures, the borrower takes into account the availability of judicial recourse and customary dispute settlement mechanisms among the Indigenous Peoples” (World Bank Operational Manual 4.10 – Indigenous Peoples, Annex B, 2005)</p>	<p>“The borrower/client will establish a mechanism to receive and facilitate resolution of the affected Indigenous Peoples' concerns, complaints, and grievances. The grievance mechanism will be scaled to the impacts of the project. It should address concerns and complaints promptly, using an understandable and transparent process that is culturally appropriate, gender responsive, and accessible to the affected Indigenous Peoples communities at no cost and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The affected Indigenous Peoples communities will be appropriately informed about the mechanism” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 58, 2009)</p>	

**Table 16: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Grievance Redress Mechanism”**

#### **4.1.17 Monitoring and Reporting**

The Monitoring and Reporting policies encompass the instruments for monitoring, assessing and reporting the implementation of the Indigenous Peoples Plan in the case of the 3

Banks. Apart from that, the ADB also mentions about the need for auditing to certify the borrower is complying with what is recommended, and, in case the project has a deep negative effect on indigenous peoples, the borrower needs to consult with qualified specialists who will be in charge of checking the monitoring and compliance results. Depending on the final check given by such experts, the borrower would might have to formulate a remedial plan, or update the current one.

The ADB also highlights the importance for the borrower to provide regular monitoring statements regarding the improvement of the implementation. The IDB, on its side, puts more emphasis on the Bank's monitoring responsibilities, rather than the borrowers. It states repeatedly that evaluation around implementation will be done with the institution's instrument.

The World Bank, on the other hand, does not go into details and does not demand for specialists consultations, corrective plan nor periodic reports – at least not in its safeguard documents. However, it is known that they do have implementation follow-up measures, which usually happen twice a year, and varies according to the level of risk that a project carries, as explained by Costa: “If a project is harder to be implemented, we can always increase the number of visits, for instance. Thus, this is a parameter and not a rule – as I said, it varies according to the principle of proportionality. Field surveys are conducted, conversations with beneficiaries, document analysis and Bank experts are always consulted by clients”. (A. Costa, personal communication, May 14th, 2018).

As mentioned before, Tugendhat states that for monitoring to be improved, staff incentives in the Banks should be more well thought in order for safeguard experts to have the respect they deserve. Currently, safeguard specialists are seen as the ones responsible for slowing down the whole project - thus, a career path in the Safeguards Unit is not really desired by many people, leaving it with a gap int terms of experts. Also, Tugendhat mentions that in the special case of the World Bank, the institution doesn't do a good job in terms of investigating in a proper way how well the safeguards were being met in practice, besides from not sharing transparency whether the policy was being met or not. According to Tugendhat, “monitoring will only really improve with a radically increase in the transparency of the Bank”. (H. Tugendhat, personal communication, May 1st, 2018).

Tugendhat also explains that monitoring should be conducted in 2 distinct levels: one is to monitor the implementation of the policy across the Bank's whole portfolios, and the other is to monitor the implementation of the safeguards in individual projects. In the latter case, monitoring

can be improved not only through staff incentives, but also the inclusion of indigenous peoples organizations in the monitoring projects, in order for them to also have a saying and review on whether the policy was fully met. (H. Tugendhat, personal communication, May 1st, 2018). Perafán agrees that indigenous peoples organizations should be included in the process, but adds that the perception of indigenous communities is also extremely important, as it is not possible to really understand the impact on indigenous peoples without directly communicating with them. Perafán also claims that the Banks and the Governments need more anthropologists and social specialists in general to monitor the compliance with the indigenous peoples policies and the project implementation. (C. Perafán, personal communication, May 3rd, 2018).

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Monitoring and Reporting</b>	<p>“OP 4.10, Annex B</p> <p>The IPP includes the following elements, as needed:</p> <p>(i) Mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the IPP. The monitoring and evaluation mechanisms should include arrangements for the free, prior, and informed consultation with the affected Indigenous Peoples’ communities” (World Bank Operational Manual 4.10 – Indigenous Peoples, Annex B, 2005)</p>	<p>“The borrower/client will monitor and measure the progress of implementation of the IPP. The extent of monitoring activities will be commensurate with the project’s risks and impacts. In addition to recording information to track performance, the borrower/client should use dynamic mechanisms, such as inspections and audits, to verify compliance with requirements and progress toward achieving the desired outcomes. For projects with significant adverse impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced external experts or qualified NGOs to verify monitoring information. The external experts engaged by the borrower/client will advise on compliance issues, and if any significant Indigenous Peoples issues are found, the borrower/client will prepare a corrective action plan or an update to the approved IPP. The borrower/client will implement the corrective actions and follow up on these actions to ensure their effectiveness. The borrower/client will prepare periodic monitoring reports on the progress of IPP implementation, highlighting compliance issues and corrective actions, if any. The borrower/client will submit semiannual monitoring reports. The costs of monitoring requirements will be reflected in project budgets” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 58, 2009)</p>	<p>“The guidelines for this policy will set out verifiable indicators of compliance with it and of its effectiveness, including the effectiveness of projects in improving the living conditions of indigenous peoples and in considering their cultural specificity. The Bank’s evaluation instruments will be used, as applicable, to monitor these indicators. The Bank will periodically evaluate the implementation of this policy and the achievement of its objectives through independent reviews that will include consultations with national governments, indigenous peoples, the private sector and civil society. The first evaluation will take place no later than five years from the entry into effect of the policy, with the understanding that the Administration or the Board of Executive Directors may initiate partial evaluations prior to this date. The results of the evaluations will be presented to the Board of Executive Directors and disseminated in accordance with the Bank’s Policy on Disclosure of Information (OP-102)” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 11, 2006)</p>

**Table 17: Comparison between the World Bank, the Asian Development Bank and the Inter-American Development Bank Indigenous Peoples Safeguard Policies when it comes to their “Monitoring and Reporting”**

As has been exposed by the tables, the 3 documents share many more similarities between them than discrepancies. The main difference between the indigenous safeguard documents, however, rests in the fact the the IDB is the only one in which its policies clearly incorporate 2 sets of directives: “to promote the development with identity of indigenous peoples” and “to protect” indigenous peoples through its safeguards norms. (Inter-American Development Bank Operational Policy on Indigenous Peoples, p.6, 2006). The ADB and the World Bank, on the other hand, are much more focused on protection: “Each of them, World Bankd and ADB, have one paragraph about supporting indigenous peoples own development ideas, but basically they are safeguards, they are not trying to play both roles. Whereas the IDB is clearly trying to do both: to promote and to protect”. (H. Tugendhat, personal communication, May 1st, 2018).

By “Promoting Development with Identity” the IDB tries to bring indigenous peoples issues and concerns to local, regional and national agendas, being the main purpose to minimize the historically social exclusion from the political agendas that indigenous have been subject to. In order for this promotion to happen, and thus for indigenous peoples to have their interests taken into account, several initiatives are mentioned in the document, such as the need to “Develop socioculturally appropriate solutions to increase the availability and quality of social services, particularly health and education”, or for the “Development of specific initiatives to implement socioculturally appropriate project alternatives for better access by indigenous peoples to labor, production, and financial markets, technical assistance, and information technology” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 7, 2006).

Unfortunately, as the IDB directive responsible for promoting indigenous development is not mandatory, it is not necessarily followed. Perafán affirms that there are some sectors of the IDB, like the health and education one, that are very insensitive towards indigenous issues: they are not willing to include special programs specifically tailored to fit indigenous peoples needs, such as intercultural bilingual education, since they claim that indigenous peoples are just a small part of the population. (C. Perafán, personal communication, May 3rd, 2018). However, even though these different views regarding indigenous peoples and their needs emanate from the Bank, several programs have been created for them, following the Banks “promotion” directive – which is also known as the proactive part. The cultural adequation of public services can be seen through giving indigenous peoples access to financial services or by providing them special registration services, for instance.



Perafán claims that the proactive part of the policies are fundamental to promote indigenous peoples development, since “doing everything right in the safeguard part won’t make too much of a difference on indigenous peoples’ wellbeing” (C. Perafán, personal communication, May 3rd, 2018). Doyle also recognizes the importance of being proactive, but by demonstrating that proactivity can have many other different meanings, as for instance the action of offering some recommendations after the accountability mechanisms’ investigation, or making the communities participate into that process so they can feel that they have access to some form of protective remedy. (C. Doyle, personal communication, May 4th, 2018). Overall, acting proactively can be a way to avoid human rights violations, and to ensure that indigenous peoples’ rights are being respected.

Unfortunately, it is difficult to envision a scenario in which all the Banks will really act proactively and promote indigenous peoples’ rights and identities, rather than only acting protectively by avoiding human rights violations. Such difficulty comes from the fact that MDBs see their responsibility towards human rights in a narrower way than indigenous peoples organizations and advocates do. Tugendhat claims that “The Banks need to proactively protect, promote and then provide redress in instances where violations occur. But what the MDBs say in response to that is that their core purpose is to advance development and not the human rights per se. I think that this is a fair way for them to conceive of their role, but where I think it becomes problematic is that they don’t necessarily see their role as providing redress and remedy, or protection and promotion. I think they do have a role in those as well, and they don’t necessarily acknowledge that or recognize that”. (H. Tugendhat, personal communication, May 1st, 2018).

Doyle agrees that it is important that people feel they have access to some form of protective remedy, and adds that indigenous should participate more in all of the processes that encompass the project implementation, and find mechanisms that are more accessible to them, such as the grievance one. (C. Doyle, personal communication, May 4th, 2018). Perafán, on the other hand, claims that the Banks are “just lenders” that only intervene when the countries need support in human rights implementation, but that they can’t do much in fully promoting those rights. (C. Perafán, personal communication, May 3rd, 2018). Thus, it is evident that views from indigenous organizations are very different from the views of those who work for the Banks – which makes it complicated to get a consent around what should be the Banks’ responsibilities.

Finally, it is also interesting to note that the architecture through which the Banks present

their safeguard documents differs between each other. The World Bank Operational Policy 4.10 and the ADB Safeguards Requirements for Indigenous Peoples share their main policies on one central document and annexes. The ADB has one annex through which it provides deeper details about what the content of the Indigenous Peoples Plan should be like, whereas the World Bank has 3 annexes: Annex A, which contains the steps necessary for the Social Impact Assessment to take place; Annex B, which includes the items needed for the IPP to be built; and Annex C, which basically structures a plan on how the Social Impact Assessment and the IPP should be held, and is known as Indigenous Peoples Planning Framework (IPPF). (World Bank Operational Manual 4.10 – Indigenous Peoples, Annex B, 2005). The ADB Safeguard Policy Statement is very similar to the World Bank one when it comes to its presentation and vocabulary – the ADB also splits its policies numerically while using exactly the same terms to refer to the fundamental elements that the borrowers should provide: Social Impact Assessment, and Indigenous Peoples Plan.

The Inter-American Development Bank, on the other hand, exposes its policies in a more textual form and less numerical steps than the other two. Also, the IDB doesn't use the same language to identify the main procedures that need to be conducted and presented by the clients – in fact, it doesn't even use specific terms for that, rather general ones, which probably makes it less obvious for Governments to understand which form of assistance they should provide, as already mentioned.

## **4.2 Gaps in the Safeguards' Compliance**

Unfortunately, there are some gaps between the written safeguard policies and their implementation, as well as a lack of compliance coming from the 3 Banks. Below, an analysis is presented regarding the World Bank, the Asian Development Bank and the Inter-American Development Bank.

### **4.2.1 WORLD BANK**

The Safeguard Policies that are currently used by the World Bank to guide the projects it finances, and therefore subject of this research, will still be referred to for around 7 years from now, while running alongside the new set of policies, the Environmental and Social Framework,

that will incrementally succeed the current one, starting in October 2018. (World Bank, 2016)

Even though the World Bank claims that its new set of social and environmental policies bring progress in terms of protection of people whose rights could be harmed and under threat by the Bank's financing projects, many NGOs and members from the civil and indigenous communities expressed their concern that the new policies are, rather than that, "complicated, confusing and fundamentally weaker" (Forest Peoples, 2016). In contrast with the ongoing Bank safeguards, the new one shifts more responsibilities to the borrowers and consequently away from the Bank itself, and relevant steps that are currently mandatory, such as the preparation of the Indigenous Peoples Plan, have an unclear specification in the coming years (Forest Peoples, 2016).

The biggest achievement, on the other hand, is the inclusion of the term "consent" and therefore the need of "free, prior and informed consent" coming from indigenous communities in case the project has negative effects on their lands, natural resources and cultural heritage; or triggers the need for their removal (The World Bank Environmental and Social Framework, 2016). However, as already stated by Doyle and Tugendhat, obtaining consent is the hardest norm to be followed, thus the inclusion of such term doesn't mean it will actually be achieved – but it is undoubtedly a progress, and having it clearly stated on a document makes it easier for NGOs, the civil society and indigenous communities to require for its compliance.

For now, though, the aim is to expose some gaps concerning the current safeguards and their concrete implementation, that were identified by official reports and relevant NGOs that concentrate their work in the promotion of indigenous peoples rights, such as Forest Peoples Programme. Some of the informations revealed by documents and interviews with the Bank's staff display the lack of conformity with the safeguard in many projects – particularly those related to involuntary resettlement, where indigenous ended up with no housing choices. According to a former World Bank employee, "There was often no intent on the part of the governments to comply, and there was often no intent on the part of the Bank's management to enforce" (The Guardian, 2015). There are some worrying evidences, coming from the Bank's private reports, that state a case in which a complaint regarding a particular project that culminated into a mass eviction was not even taken into account by the Inspection Panel, the institution's accountability mechanism. The Bank, in 2015, finally accepted that, indeed, the implementation of projects involving resettlement was source of deliberate flaws. (The Guardian, 2015).

Also in 2015, an open letter was written to the World Bank's president, Dr. Jim Yong Kim,

to state the concern coming from 85 NGOs regarding the disrespect towards indigenous peoples rights, coming from the lack of compliance with the safeguard policies - specially concerning involuntary resettlement. The letter states that “the findings of the Portfolio Review are deeply troubling”, exposing crucial failures and mismatch with the institution’s policies for indigenous peoples. (Human Rights Watch, 2015). In the letter, scholars and indigenous peoples advocates also commented on the fact that it took almost 4 years for the Bank to make public its review on financed projects – which evidently shows a lack of transparency. (Human Rights Watch, 2015).

Another issue that is raised regarding the institution’s policies is around their implementation, which is not done properly. What should be considered by “implementation”, in this case, is the correct adoption of the policies safeguards and the application of risk assessments in every stages of the project. Such lack of implementation is due to several issues: one of them, as already specified by Tugendhat earlier, is the insufficient staff incentives, which makes it unattractive to consider a career in the world of safeguards – and, therefore, pushes away experts in the field, whose knowledge and skills could help do a better work in implementing these policies. (Bank Information Center, Forest Peoples Programme, Urgewald, p.3, 2013).

Additionally, existing budget restrictions makes the number and level of the working team unsatisfactory during project supervision, negatively impacting the requisite resources for adequate implementation. The Inspection Panel itself has also stated that the risk assessment, which is mandatory, is not always taken into account, which can result in high chances of serious abuses (Bank Information Center, Forest Peoples Programme, Urgewald, p.4, 2013). Last but not least, as provided by the report, the monitoring and evaluation mechanisms need to be improved. The monitoring indicators are not precise enough to demonstrate whether the policies are being applied, and there is no strong evaluation system due to the insufficient project supervision, as exposed above. (Bank Information Center, Forest Peoples Programme, Urgewald, p.5, 2013)

Another report, issued during the UN Permanent Forum on Indigenous Issues, in 2013, highlights some gaps regarding the indigenous peoples rights secured by the UNDRIP and the indigenous policies applied by the World Bank. Even though the articles 41, 42 and 43 of the UNDRIP state that UN institutions – in which the World Bank includes itself - should fully comply with all the norms and rights declared on the document, it is clear from all the interviewees that this doesn’t happen, since, even though all the policies were perfectly implemented, indigenous peoples rights would still not all be covered. (Tugendhat, Perafán, Doyle, personal communication,

May 2018). The report states that the World Bank has been hesitant to implement a human rights agenda, mainly due to bureaucratic restrictions and internal inconsistent views on how to approach and implement human rights measures. (United Nations Economic and Social Council, 2013). A mismatch between the UNDRIP and the World Bank policies can be seen in different occasions, as for instance when the indigenous peoples policy states that indigenous peoples are entitled to only keep the lands that they have “traditionally owned or customarily used or occupied”, whereas the UNDRIP claims that lands obtained through other ways than those 2 – which happens frequently – should also be guaranteed. (United Nations Economic and Social Council, 2013).

The report also mentions gaps in the compliance with such policies, noting that a 2011 review of the implementation of indigenous peoples policies showed that conformity with consultation was rather positive, whereas community support lacked compliance. (United Nations Economic and Social Council, 2013). Such conclusions are not surprising, since both Tugendhat and Doyle have argued about how hard it is for consent – or, in this case, “broad community support” to be achieved. In addition to that, there are concerns regarding the weak procedures that have been put in place to arrange consultations, which undermines adequate participation: complaints regarding the short time of the consultation sessions, the non-circulation of useful documents ahead of the meetings and the non-announcement of the meetings with enough time in advance were raised by the concerned stakeholders. (United Nations Economic and Social Council, 2013).

The Bank has also failed to determine the economic, social and environmental risks and possible harmful effects of some projects, which resulted in the preparation of Indigenous Peoples Plans that were not in accordance with the context in which indigenous peoples live. (Forest Peoples Plan, 2010). In other words, IPPs that didn’t consider the basic principle of proportionality, as explained earlier by Costa.

#### **4.2.2 ASIAN DEVELOPMENT BANK**

The current Asian Development Bank set of safeguard policies is known as the Safeguard Policy Statement (SPS), and has been established in 2009. The importance of such policies being adopted by financial institutions in general has already been highlighted before, but in the ADB particular case it becomes even more evident through the statistics that states that almost three-

quarters of the world's indigenous peoples are located in the Asian and Pacific region. Thus, the need to have sound policies that protect their rights is indispensable. (Asian Development Bank).

As identified through reports that analyzed the World Bank's compliance with its policies and noted a weakness in implementation and supervision of projects, the same can be related to the ADB's safeguards, as stated by the Independent Evaluation Department (IED), the Asian Development Bank accountability mechanism. The IED also recognizes that higher expenditures with staff are necessary, in order for the whole safeguard implementation and supervision process to be more effective. (Asian Development Bank, 2014).

In 2014, a meeting called "Regional Training on Safeguard Policies and Grievance Mechanisms of International Financial Institutions", held in the Philippines, brought together several indigenous peoples advocates, from 20 indigenous organizations around the world. The goal was to discuss how the ADB policies and its implementation could be improved, taking into consideration feedbacks from communities affected by the projects and other relevant stakeholders, in order to provide a report with concerns.

Regarding the policies, it was argued that they don't meet the international human rights standards, such as those provided by the UNDRIP. Thus, they do not fully protect indigenous peoples rights. The report highlighted specially the fact that land rights are not covered and preserved, as they should on the safeguards, which is of serious concern. Moreover, criticism regarding the lack of adequate sanctions for Governments towards their non-conformity with policies and the consequent damages that are left pending due to this in communities was also reported. (Indigenous Voices In Asia, 2014).

Concerning the implementation of policies, a worry raised by NGOs – that was also raised in the World Bank policies implementation – is the absence of detailed instructions and information for the communities regarding the consultation process and the policies protection themselves, as well as insufficient time aimed for consultation and data sharing. (Indigenous Voices In Asia, 2014).

Although the ADB is the only Bank, among the 3, that has included in its policies the term "consent", it doesn't mean it requires consent for all its processes along implementation. Instead, the norm of free, prior and informed consent refers to only a limited amount of operations, and is rather referred to as "broad community support" – which, according to some indigenous advocates and NGOs, does not include the truly foundations of free, prior and informed consent. (Carling, et

al., 2009). Another complaint is that, frequently, indigenous removed from their lands do not receive the considerations and benefits stated on the involuntary resettlement provision, even when ADB's grievance mechanism norms, known as Compliance Review Panel (CRP), agrees it should do more. Besides, a current concern is that the CRP is not entitled anymore to recommend countermeasures when ADB norms are violated. (Dembowski, 2016).

The ADB accountability mechanism should also have some improvements, since it is not seen as sufficiently transparent. Some member countries show a certain resistance towards it, probably due to their own non-compliance with some safeguards norms; and it is not as independent as it is expected from an accountability instrument, since it has to report to the Board, and the latter is responsible for deciding whether or not to provide some remedies. (Park, 2015). A lack of transparency can also be seen through the fact that the ADB's website doesn't provide relevant and convincing informations about the safeguard policies operational review, in a apparent attempt to withhold the fact that the institution has not been complying with the NGO's and civil society demands to reinforce its policies. (NGO Forum on ADB, 2014).

The IED also strengthened that, since in Asia particularly there has been a lot of pressure for economic expansion, the environment has been suffering the negative consequences of it. Thus, a higher enforcement and supervision of the indigenous peoples policies is even more fundamental than before. However, as previously stated, the inconsistency in the policies implementation and supervision are still huge. (Fried, 2015).

In an event to celebrate ADB's 50 years of safeguards, there was unanimous agreement around the fact that it is necessary to better support borrowers in the safeguard policies implementation, and that the adoption of a country safeguards structure instead of the Bank's one should be reviewed, since some countries have very fragile structures. (Asian Development Bank, 2017). The improvement on implementation could be done in different ways, such as by offering some trainings to the Banks' staff in order to enhance their working capacities or by involving more the indigenous communities in several stages of the implementation process, going from the consultation to the monitoring part.

### **4.2.3 INTER-AMERICAN DEVELOPMENT BANK**

The ongoing Inter-American Development Bank set of indigenous policies is known as the

Operational Policy on Indigenous Peoples, and has been launched in 2006. As already exposed before, the IDB, contrary to the World Bank and the ADB, presents within its social and environmental policies 2 different directives. In the case of the indigenous policies, one directive has the intention of promoting the indigenous peoples identity and rights, and the other aims at avoiding human rights violations through its safeguards. The central objective of all the policies is to diminish inequality and poverty in Latin America and the Caribbean. (Inter-American Development Bank).

Before the set of safeguards was adopted, the Bank claimed having planned 40 meetings with indigenous communities in order to collect their inputs and opinions around the policies. However, at that time, it was only the draft, and the indigenous complained about the fact that the Bank didn't share pertinent informations with sufficient time in advance so that they could participate in the discussions in a more prepared way. Then, when the policies were ready as they are currently known, only one meeting was held with an indigenous community, in Costa Rica, for their feedback. (Jiménez, 2006). Therefore, it is not a surprise to realize that the policies don't entirely reflect indigenous peoples' needs.

As could be noticed through the Table 16, regarding the comparative analysis, the IDB is the only Bank that doesn't state on its safeguard document that it provides a grievance redress mechanism. This is very serious, since such document is the only instrument available for indigenous peoples to get awareness about their rights and about the borrower and the Banks' responsibilities. Thus, not mentioning about such complaint mechanism is not only harmful for the indigenous peoples, but also for the compliance process: if there are some violations and indigenous are not aware about the grievance mechanism, they can't lodge a complaint and therefore the accountability mechanism cannot investigate. It shows a lack in transparency that could not happen in a public institution.

Also, it is claimed that the ADB indigenous policies don't fully perceive indigenous peoples customary laws and juridical system, besides from not being explicit about indigenous' participation around arrangements to establish preserved areas, and not requiring indigenous' agreement or consent as much as it should. (Jiménez, 2006).

Regarding the implementation of such policies, it has been reported that some projects didn't correctly arrange the consultations with the communities, or not even actually organized such consultations – which is essential for the other indigenous rights to be taken into account and



respected. (Inter-American Development Bank, 2013). Unfortunately, even the Office of Evaluation and Oversight, which is the official department from the IDB responsible for undertaking evaluations around the compliance of the Bank with its safeguards, didn't have the needed documentation to evaluate the Bank's compliance – which already demonstrates, paradoxically, a lack of compliance coming from the Bank, since the institution needs to conduct evaluations of the whole implementation process, and the reports resulting from such evaluations should be available for the Office of Evaluation and Oversight. (Inter-American Development Bank, 2013).

A report from the Bank's Independent Consultation and Investigation Mechanism exposes that, in 2016, 5 out of the 22 papers linked to projects involving environmental and indigenous safeguards were released from the Bank to its consultation mechanism. (Indian Law Resource Center, 2016). The report adds that the Bank didn't comply with the indigenous peoples' land rights and that the communities weren't consulted, in a particular project in Mexico. (Indian Law Resource Center, 2016).

Besides from including the participation of indigenous peoples through the consultation process of all projects, which the Bank clearly doesn't, as recognized by different sources of reports, the IDB also needs to take into consideration their participation in other processes, equally important, such as the monitoring and evaluation parts. (Bank Information Center).

The Office of Evaluation and Oversight also found as a relevant concern that “the evaluability of operations related to indigenous issues is low” and “indigenous issues are less prevalent in country strategies from 2006 onward” (Inter-American Development Bank, 2012). As some recommendations, the office highlights the need to improve the Bank's monitoring process through intensifying its information structure, and reinforce evaluations that can lead to better practices.

As noticed, the Banks not only have very similar policies, but they also share related issues of non-compliance with some of them. The consultation and community support provisions are clearly the ones that are the less followed among all the policies – as could be concluded from the interviews and from the above reviews. The lack of transparency coming from the Banks in terms of disclosure of documents related to evaluations and relevant informations needed for the indigenous peoples to participate in an informed dialogue were also noted through the analyses.

### **4.3 Suggestion for an Indigenous Peoples Safeguard Policy for the African Development Bank**

The African Development Bank doesn't have a stand-alone safeguard policy dedicated for indigenous peoples. Instead, indigenous peoples are mentioned under the "Operational Safeguard 1 – Environmental and Social Assessment" as pertaining to the group of vulnerable people. (African Development Bank Group, 2013). Therefore, those that support the creation of an independent safeguard policy for them claim that, in its current absence, indigenous peoples cannot fight for their essential rights to land, natural resources, free, prior and informed consent and self-determination – which makes it impossible for them to make any complaint when such rights are being undermined, since they are not even properly considered in the current AfDB Integrated Safeguard System. (Ndobe & Durrell, 2012).

However, those who believe it is not necessary to have a stand-alone policy for indigenous peoples support ideas such as that the majority of the African continent is made of indigenous peoples, hence there is no need to have an independent policy for them; or that independent policies could influence heavily on territorial integrity due to the right to self-determination. (African Development Bank Group, 2013).

Nonetheless, as has been seen through this research, stand-alone policies for indigenous peoples are fundamental to protect their particular collective and individual rights – and that, even though MDBs fail in their attempt to fully protect them, due to several weaknesses across mechanisms and processes already exposed, such policies are essential. Therefore, after a comparative analysis between the independent indigenous peoples policies from the World Bank, the ADB and the IDB, a stand-alone indigenous peoples safeguard framework for the AfDB is proposed below, taking into account the most suitable provisions necessary to protect indigenous peoples rights coming from the 3 analyzed Banks, and also the feedbacks from the interviews.

It is important to highlight that the African continent is a very heterogeneous one, with 54 countries that differentiate themselves on matters such as culture, economy, social engagement, level of development, and many others. Therefore, the implementation of such policies, if the AfDB would be willing to do so, would actually be a challenge. It would be important for the civil society to engage in such matters and pressure the Governments to approve and consequently implement such safeguards within the Bank. Even though the heterogeneity could play a tough

role in letting this happen, it has been possible to notice across the world that tiny yet representative groups can disseminate informations and act as a catalyst for many others, incentivating other clusters to also fight for their rights. In the current era of fast sharing of information and in which minorities are getting more voice than ever before (even though there is still a long way to go), it is indeed possible to believe that the implementation of such safeguard policies could be a reality – not easy to achieve, as it has not been easy in any of the other continents – but feasible with effort and persistence.

	<b>African Development Bank</b>
<b>Introduction / Definitions</b>	Indigenous peoples are among the world’s most marginalized minorities. They are often deprived from good quality services involving health and education, and companies and Governments historically do not consider their opinions when development projects are on their way. However, the AfDB must recognize that indigenous peoples are essential to guarantee a sustainable development due to their ancestral link to territories and natural resources, and that their rights are protected by the UNDRIP, whose the majority of African countries have endorsed. Thus, indigenous peoples intrinsic forms of governance, cultural heritage, and social and economic institutions must be respected and involved when considering projects that might have an impact on their own lands and resources.
<b>Objectives</b>	The AfDB objective is to alleviate poverty by financing development projects. However, such development projects must guarantee a sustainable development while ensuring that the rights pertaining to indigenous peoples in all matters that affect them are being respected, so that they are entitled to the social and economic gains deriving from projects, are not damaged from negative effects that projects might cause, are able to engage in all projects that impact them, and have their scope of governance intensified to decide upon their own matters.
<b>Scope of Application</b>	The norms cover all the projects supported by the AfDB, regardless of their financial or nonfinancial sources.
<b>Who are “Indigenous Peoples”</b>	For the intent of this policy, the denomination of indigenous peoples should refer to a minority that has been historically marginalized and is the native occupants of a particular land. This minority shares some similar characteristics, such as the self-identification as indigenous peoples themselves and the acceptance of this identification by other people, a historical connection with the lands and natural resources that exist in the sphere of the project, diverse economic, social and political structures, and a different dialect. The differences the text relates to are the leading society that contrasts with such vulnerable groups known as the indigenous peoples
<b>Use of Country Systems</b>	In case the borrower country can provide within its national legislation or its own indigenous juridical system norms that are stronger than those provided by the AfDB’s own independent safeguard policies, then such norms should be taken into consideration to protect indigenous peoples towards development projects

<b>Evaluation/ Screening</b>	<p>If a development project might impact indigenous peoples, the first action that needs to be taken is a screening, from the Bank, to understand which kind of indigenous peoples could be impacted by such project. Then, when such screening – also known as evaluation – is finished, the next step that needs to be undertaken, but this time from the borrower's side, is a Social Impact Assessment to determine the effects that the project might have on the indigenous community. The AfDB is only allowed to finance a project in which its borrower Government has conducted a process of consultation with the entire community, and such community has provided its free, prior and informed consent for the project to go on.</p>
<b>Consultation</b>	<p>When it has been evaluated that the project has adverse impacts on indigenous peoples, the consultation process with them must start to take part on a recurring basis all along the project implementation. Such consultation must be held in a gender and intergenerational comprehensive form, in which women's and children's matters are also taken into account. It is essential that such consultation is done in a culturally appropriate way, meaning that the language used to communicate with indigenous peoples must be suited to them, and that all the informations regarding the project are fully provided and with sufficient time in advance for the community to go through them and raise all its questions. Such informations are essential for the consultation to result in an informed dialogue for both sides: the borrower and the indigenous peoples.</p> <p>The consultation must certify that indigenous peoples will be engaged in the process of implementing and monitoring the actions to withdraw the negative effects the project might have on their community, and also engaged in shaping the positive outcomes that the project might have, so it is culturally adapted to indigenous peoples' needs.</p>
<b>Social Assessment</b>	<p>Once the indigenous community has provided its consent for the project to materialize, the borrower must undertake a Social Impact Assessment and formulate a report resulting from its findings. The Social Impact Assessment must be undertaken with the help of social specialists; and the harmed indigenous peoples, the adverse impacts that the project might have on them, together with its benefits, must be assessed. The report should also estimate the resources that will be needed to tackle the problems that will result from such projects.</p>
<b>Consent</b>	<p>In order to proceed with the development of a project, the borrower should ensure that the right to free, prior and informed consent is guaranteed to the whole community. All the indigenous peoples have the right to share their consent over resolutions that will impact their territories or livelihood. Consent should be seek in every stage of the project's implementation, and not only at the beginning.</p>
<b>IPP</b>	<p>Once the Social Impact Assessment has been done, the borrower must prepare an Indigenous Peoples Plan, in which it states how it will guarantee that impacted indigenous peoples will benefit from social and economic positive outcomes coming from the projects, and how the negative impacts that will result from the projects will be avoided or minimized.</p> <p>The IPP's number of details should be structured according to the level of effects that will result from the project.</p>
<b>Disclosure of Information</b>	<p>The borrower must provide to the Bank the IPP and the Social Impact Assessment. The Bank should disclose them on its website, but also make them available to the indigenous peoples in a way that is suitable to their needs (in terms of language). The Bank should also disclose on its website the monitoring and accountability review reports within a limited amount of time, following a consistent policy for transparency.</p>

<b>Special Considerations</b>	There are some special requirements that must be taken into account by the borrowers when the project has any impact on indigenous peoples' land or natural resources. Such requirements, that should be considered when the Social Impact Assessment and the IPP are being formulated, are the following: the individual and collective customary rights of indigenous peoples related to the territories that belonged to them, the importance of safeguarding such territories or natural resources counter to intervention, the spiritual appraisal that the territories have for the indigenous communities, and the support of indigenous peoples in the management and maintenance of such lands and natural resources.
<b>Commercial Development of Natural and Cultural Resources</b>	In case the project results in the commercial development of indigenous peoples' knowledge and natural and cultural resources, the borrower needs to guarantee that the indigenous peoples are fully aware of their rights under customary law, the financial opportunity that arises from such commercial development and all the groups involved, and the impacts that the commercial development might have on indigenous peoples' living conditions. Such commercial development, like all other actions gaining from indigenous peoples lands, culture, natural resources and knowledge, should not proceed without indigenous peoples' consent.
<b>Physical Relocation of Indigenous Peoples</b>	In cases in which there is no other solution than to relocate indigenous peoples to a different land, it is essential that the borrower follows the policies on Operational Safeguard 2– Involuntary Resettlement: land acquisition, population displacement and compensation, in order to ensure that a resettlement plan is created and that indigenous will have their living conditions affected by a minimum degree. The resettlement plan should also include the option for indigenous peoples to return to their territories when possible.
<b>Indigenous Peoples and Development</b>	It is important that the AfDB is able to financially assist borrowers, when needed, in matters such as to support the local legislation, to let indigenous peoples be more involved in all the stages of the development projects, to enhance the development preferences of indigenous peoples, to assist the Governments in providing better services to indigenous peoples and tailored to their needs, and to include the concerns of indigenous women, elderly and youth
<b>Grievance Redress Mechanism</b>	The AfDB must provide a grievance redress mechanism that is accessible to indigenous peoples: tailored to their cultural needs, in a language they understand and in a simple process that they can count on everytime they have a complaint. It is also crucial that the indigenous peoples are made aware of such mechanism, in every development project.
<b>Monitoring and Reporting</b>	The AfDB is responsible to provide monitoring, evaluating and reporting mechanisms during the process of implementation of the project. Such mechanisms should count with safeguard specialists, and the reports resulted from the monitoring, evaluation and reporting should be publicly available in a recurring basis. The monitoring mechanism should also have the support of indigenous communities and organizations, since it is fundamental for these stakeholders to have a voice in such process.

Source: Inter-American Development Bank Operational Policy on Indigenous Peoples, 2006; Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, 2009; World Bank Operational Manual 4.10 – Indigenous Peoples, 2005)

## 5 CONCLUSION

This research aimed at analysing if Multilateral Development Banks are protecting

indigenous peoples' rights through their safeguard policies. First, the literature review exposed the documents that secure indigenous peoples rights, and which is the role of financial institutions. Thereafter, for the results part, a comparative analysis between the safeguard policies from the World Bank, the Asian Development Bank and the Inter-American Development Bank was held in order to understand their similarities, differences and, with the inputs from the interviews, their weaknesses and strengths. An analysis of each Bank's compliance with the policies was also displayed from official reports. Finally, a suggestion of an indigenous peoples stand-alone safeguard policy for the African Development Bank was proposed.

The jurisdictional gap that prevents Multilateral Development Banks from being charged for their human rights violations certainly leads such institutions to not being fully committed with the compliance of their own policies. The Banks' legal immunity makes their obligations towards human rights to be uncertain: whereas indigenous peoples organizations and advocates claim that they should also promote indigenous peoples rights, the Banks themselves only see their role as institutions that should avoid human rights abuses during the development projects that they finance through their safeguards policies. If the Banks' legal obligations were not that blurred, and a better precision around their role existed, probably they would act in a more compliant way.

However, even if the Banks and the borrowers acted exactly in compliance with the safeguards, it would not be sufficient to guarantee indigenous peoples rights are being fully respected, since the policies from the Banks don't provide all the provisions that UNDRIP does. The most important one, which is consent, is rarely achieved, and the Banks use different words to mention it – and, when they do use it, it doesn't encompass all the cases it should. The UNDRIP has been clear in its statement that free, prior and informed consent is a right that belongs to all indigenous peoples whose lands or cultural heritage are going to be undermined due to a particular development project. Thus, knowing that the UNDRIP is already 11 years old, and that the World Bank is the only one that has updated its policies, it is time for the ADB and the IDB to update theirs as well, accordingly.

The extent to which the policies are followed and implemented doesn't vary depending on the Bank where they come from, but rather on the country and the sector of lending. The Banks have very similar processes and weaknesses, and their safeguard policies are deliberately much alike. Thus, it rests on the Government's will to follow the processes: whereas some are willing to comply with the policies, others contest them heavily. The Banks, on their turn, knowing that

implementation is the main issue, should do a far better work in terms of supervising, monitoring and reporting it: well-trained safeguard specialists should be hired; indigenous peoples' views and opinions should be considered, thus more communication with them is needed; and more transparency coming from the Banks is important to know if the policies have been met. In addition, the Banks should be much more active and rigorous when punishing the Governments whose projects have caused serious injuries to indigenous peoples. What the Banks can do is to stop financing them, but, unfortunately, the cases where it actually happened are extremely rare.

In order to address the lack of compliance, it becomes clear that some mechanisms managed by the Banks also need to be better designed. The grievance mechanism should be more tailored to indigenous peoples context: it should be more accessible to them in terms of language, but also more widespread so that communities are aware of its existence. The accountability mechanisms also have some flaws, as they should be more independent from the Banks, provide some remedies and have an enforcement power. Also, it is essential that the Banks better disseminate the existence of safeguard policies among indigenous peoples communities: a lot of them ignore that they are entitled to certain rights, and consequently do not claim them, or denounce them when they are being neglected.

All that leads to the conclusion that the Banks are not protecting indigenous peoples as they could: taking into consideration their economic power in providing loans and technical assistance, and their political and social power in shaping policies around the world, they could and should do much more. There are several reasons why they are not correctly protecting indigenous peoples' rights, as already mentioned above: their safeguard policies are not in agreement with the UNDRIP; they can't be sued under international law; their grievance and accountability mechanisms are not strong enough; their supervising, monitoring and reporting processes need to be enhanced; and their punishment towards the borrowers' human rights violations is rarely executed.

Surely, the Banks cannot ensure on their own that indigenous peoples are being protected: it is a work that must be done by the Governments. For now, pressure coming from the civil society and indigenous peoples organizations for Banks to comply with their safeguard policies must continue to go on, as well as the many complaints coming from UN agencies and NGOs.

It is important to highlight that the thesis aims at providing a critical view towards the MDBs' work, but it doesn't intend to overestimate their obligations. It understands that the Banks

are financial institutions and that, therefore, they act as lenders. Thus, the main obligations and critics are intended to be addressed by the Governments, which are those that are involved in international human rights treaty and that should promote indigenous peoples' rights. Once Governments actually do their part and comply with the policies, the Banks' work would probably be viewed in a much more positive way. For now, as the Banks are involved in the process and as some Governments lack in assuming their responsibilities, it seems that the Banks are entirely responsible for what is not going right, whereas actually, even though they could improve in matters such as accountability, it still rests on the States to make sure indigenous peoples are being protected.



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## 7 APPENDIX

### 7.1 APPENDIX 1 – Interview with Helen Tugendhat

Projects and Operations Lead and Policy Advisor at Forest Peoples Programme (London, England)

#### **1) Do you think there are pros and cons in imposing a stand-alone indigenous peoples safeguard? If yes, which are they?**

Significant positive, which is often part not understood as much by the Banks as they might. If there is an independent indigenous people safeguards, then it makes it much easier for an indigenous community to understand what the framework is that a particular project has to be bound by, because all of these Banks have multiple environmental and social safeguards on project managements systems: on environmental impact assessment, on resettlement, on a range of issues, and that can be incredibly disconcerting for a community that is trying to understand what the company or the Government is bound to do, and with an indigenous peoples safeguard, that gathers in the requirements of all the other policies well relevant for the indigenous people who will replicate in the indigenous peoples policies. So it means that for indigenous communities and indigenous organizations they have one document which they can refer to which gives them the most direct access to what the public financial institutions is requiring of the implementing agencies whether that be the Government or others, and I think this is much more of a positive than we sometimes realize, because one of the strongest things for these policies to be really met in practice or enforced properly is understanding within several societies and within communities about what they actually say. So I think this is one that is worth mentioning. Another one is that there is a very distinct impact that extractive or large infrastructure or other projects might have on indigenous peoples, and I think the history of where these safeguards originated from is quite illustrative: in 1980s, when there was some very serious impacts on indigenous communities, in Brazil, Latin America mainly, but also in Africa, the Banks understood that there very specific impacts were felt by people who lived with collective Governments, that was different from what happened in other infrastructural projects, and that there was a very specific need to understand why those impacts were happening and tailor the response to those impacts. These policies were

addressing a very specific set of experiences and vulnerabilities. I don't think that there is much negative. I very much support the continuation of having independent indigenous peoples policies, the only thing that I guess I might say is that it lessens the extent to which indigenous organizations bother to look at some of the other policies and some of the other safeguard policies, like the use of country barrier systems or how development policy lending is controlled. Both of those examples are World Bank policies, although the country systems is also a IDB policy, and those policies also have quite significant impacts on indigenous people rights, but they have been developed separately, so I am concerned sometimes that the indigenous movement or indigenous organizations can focus solely on indigenous peoples policy because it's clearly relevant, and they might not look at some of the other policies that are maybe more impactful for them as well. So that would be the only con I think.

Victoria: I have doubts whether the indigenous are actually aware of these policies, if they have informations regarding their rights.

Tugendhat: These are 2 slightly different questions. Understanding what the requirements of a Public Bank are is one piece, and then understanding what your rights are as indigenous peoples under international law is slightly different. Because none of these policies replicate international law. They all consider the appropriate requirements for a Public Bank but they don't require the same things as international law. So there is always a gap between what these policies require and what for instance the UNDRIP would say in a particular instance. And these Banks have very clearly articulated that they will not enforce international law directly, they will consider their own responsibilities under international law and provide requirements that they feel are fitting. But there is a gap, so the questions are separate. The extent to which indigenous peoples understand their rights is one question and a separate question would be to which extent these communities understand the requirements the Banks have to make or the borrowers have to make. In terms of that second question I think it varies enormously accross the world. There are very different levels of awareness, knowledge, sophistication and maturity between indigenous organizations and indigenous communities. It is certainly the case that they should be told of the policies in a language that is accessible and culturally appropriate and understandable. The extent to which that actually happens you need to check case by case to see where it is. There is certainly a gap – I

mean, these are quite technical and complicated policies, and understanding the fundamental requirements... I don't think you can say it is fully understood by every person who is being impacted by one of these projects. The indigenous organizations are very aware of the existence of these policies so there is certainly an indigenous push to wide the understanding of what these policies are, but the other element to understand is that it does need to be on a project by project basis at some level, because these policies do change over time. So what was required in 2003 and what is required now are totally different policies. So what indigenous peoples might have been aware of in 2003 and what they need to now be aware of are 2 completely different things as well. So it is really project by project that people need to be made aware of what the requirements are now, and I think there is a gap where consultants or borrowers are not particularly good at explaining the policies from which the requirements come from. But in some projects they are made very well on that, so it's not universal.

**2) Among the policies for indigenous peoples, what are the norms that are the less followed and which are the ones that generally get more compliance? Why do you think this happens?**

These policies are different. The 3 Banks (World Bank, ADB and IDB) have different intents, so they have been designed differently. What they require is slightly different. They all require consultation, so there is certainly a lot of similarities between them. But where they sit on the spectrum of what consent is, or what consent means, is different. I would say that the norm which is most generally followed is the norm that you need to talk to and consult with indigenous peoples, and do environmental and social impact assessment. Those 2 are quite well respected. What consultation means is very different according to who is arranging this consultation. I think the quality of the consultations that are arranged is variable. The requirements are implemented by the borrowers, so it's the Governments that differ and are responsible for constructing these consultations. The Bank only does the consultation when they are consultation on Bank policy, but not on Bank projects. I think the consultation norm is very strong now, but the way it is implemented can vary between very good to very bad. I think consent is a much more complicated one. There is a requirement for consent now in the World Bank policies, and they use the word consent in the ADB policy, although it's defined rather differently in details - but they do use the word. So I think the idea of consent is something that should be sought at a senior level in these

institutions quite strongly, but in reality consent is extremely difficult: not necessarily extremely difficult to do, but is done properly very rarely, so I think it's a norm which gets less.

**3) How consultation with indigenous prior to projects and implementation and monitoring of safeguards could be improved, since the critics are mainly towards the lack or weakness of these actions?**

It is really important for the Bank to have really well trained safeguards specialists who understand the contents of the policies that they are requiring Governments to follow, and there are some but not enough safeguard specialists in the Banks, or there haven't been for the last decade or so, who are really experts on indigenous peoples' rights, on the policies that they are requiring others to implement. So I think there is a really important need to increase internal capacity in the World Bank to guide Governments on how to do these stuff properly. So I think that would go quite some way; there's an indigenous peoples focal point in the World Bank, there is always one senior social specialist to sort out the focal point on indigenous peoples rights, and it is very important for that role to be held by somebody who balances the need for proactive investment and support in indigenous peoples owned plans and how they want to develop, and is very strong on insuring where there are dangers or potential damages to indigenous peoples rights. That person is also acting as an advocate for indigenous peoples rights within the Bank, and I think historically that position has been held by some strong people, and I think currently it is held by someone who is not particularly strong. He is very strong actually on promoting investments in indigenous peoples development plans but he's not very strong on addressing where the weaknesses are, so I think that crucial internal staff investment is necessary.

Victoria: Do you think there is a lack of specialists also in the other Banks?

Tugendhat: Yes, the ADB has always had one, and the IDB has more than one because there is a much longer history in understanding indigenous peoples rights in Latin America, and the IDB was ahead of the curve in understanding how to address these issues, so there is a number of people in the IDB who are aware of these issues.

Victoria: How do you think monitoring can be improved?

Tugendhat: I think there needs to be a change in staff incentives in the Banks to promote or respect the role of safeguard specialists more strongly in flagging problems. There is a lot of incentives in the Banks that are built around making sure that the money continues to flow, but there is not quite as much incentive around promoting and really putting forward safeguard specialists. Safeguards are sometimes seen as a delay in the progress of the project, and that sort of runs counter to the central philosophy of the Bank, which is to continue to push money out of the door, and the safeguard specialist can be seen as sort of slowing that down, and I think their own status within the bank is not as well respected as it might be, so there is something around staff incentives that would improve monitoring. The other piece is that the Bank is not particularly good at being public with its review of how the safeguards were implemented. There was a review commission of the OP4.10, and it took years to complete, and then it wasn't published for a really long time. It was down in 2009, but wasn't actually published until 2011, and when it was published it was really weak and had some shocking observations in it about gaps in the implementation of the OP4.10, but hadn't been made public for 2 years. It was a real example of the Bank trying to not really investigate how the policy was implemented in practice, or not wanting to give transparency if the safeguard was being fulfilled, and there is some really shocking statistics in there about the radically different application of the policy between different regions, and radically different application of the policy in different sectors of lending. So you can see that in the Americas it's triggered a huge amount, in Asian it's triggered far far less, even though there are many indigenous peoples in Asia. It just wasn't triggered with the same regularity, so it points to a sort of a misunderstanding of how the policy should be implemented. But then it was sort of hidden, which is a real shame. It was 10 years ago now, but there hasn't really been any change in the willingness of the Bank to be really transparent about where it's been successful, and monitoring will only really improve with a radically increase in the transparency of the Bank.

But there is also monitoring in 2 different levels. You need to monitor the implementation of the safeguard across the institution's portfolios, this is one level of monitoring, and then the other level of monitoring is obviously the policy in a particular project, and in a particular project that level of monitoring can be enhanced by investment in staffing, like I was talking about before, and involvement of indigenous peoples organizations in the monitoring process, so getting indigenous

peoples to have an opinion if the safeguards were implemented, as opposed to have an independent consultant come in, or World Bank staff come in.

**4) What do you believe is the responsibility/role of Multilateral Development Banks towards human rights and how should they approach human rights violations?**

There is a difference between the World Bank and the ADB and IDB. The World Bank is technically a specialized agency of the UN and that gives it a status which is different from the regional banks. And we would argue very strongly that as a specialized agency of the UN the World Bank has a very particular responsibility to align its work with the human rights framework that has been developed by the UN system. So there is a very specific link between being a specialized agency of the UN and the human rights framework developed by the UN. The World Bank says that this is not the case. It says that it is not a subject of international law, and doesn't hold these responsibilities. But we would argue that it does. There is another link as well, which is that the MDBs are governed by countries, and Governments are bound by international human rights law, so when the UK Government votes on the Board of the ADB or the World Bank, they carry with them into that vote their own responsibilities to international human rights law, so the votes of all Governments on the Board of these institutions should be bound by those Governments' own responsibilities towards human rights as well. So you can see the responsibility sitting in the agency itself, as we do with the World Bank, or being channeled through the Governments that govern these institutions, but both have very direct links to the international human rights framework. So in terms of how should they approach, there is a responsibility to protect from human rights violations, and in the event that human rights violations occur, provide remedy and redress to that violation, and those responsibilities we would argue sit with the MDBs, they need to pro actively protect, promote and then provide redress in instances where violations occur. But what the MDBs say in response to that is that their core purpose is not to advance the international human rights system, their core purpose is to advance development and therefore increase the realization of human rights, and I think this is fair to an extent, their purpose and their mandate is to advance development that is socially and environmentally responsible and doesn't violate human rights, but their core purpose is not the human rights per se, their core purpose is the development that would underpin the realization of some of those rights, so I think that is a fair

way for them to conceive of their role. Where I think it becomes problematic is that they don't necessarily see their role as providing redress and remedy or protection and promotion, I think they do have a role in those as well, and they don't necessarily acknowledge that or recognize that.

Victoria: Do you think there is a Bank that does it better in recognizing these roles, among the 3?

Tugendhat: It's difficult, those Banks are governed by the same Governments, so there is an incentive to not let the Banks get too different from each other. So in all Government agencies that are responsible for informing and guiding the votes of their Governments on these Boards they are very careful to cross-check what is happening across the different Banks, because they don't want one to get well off in front of the others, because it would put pressure on the other Banks. I mean, they are very different political institutions, the ADB exists in a context which is very different from the World Bank, and it did advance consent before the World Bank did, but there is a communication between these Banks as well which creates a pressure that they don't change too much from each other. But having said that, I don't know the Inter-American system particularly well, but I have always had the impression that the IDB was a bit better on this than the other Banks, but it also matters where you are within the Banks – which country and which sector. Because the political will of the borrower is really important in terms of how well these processes are done in practice, and some Governments are very opened to and willing to follow these processes, while other Governments fight them tooth and nail, they do them but they don't really want to do them, so they end up not doing them very well, so it also depends on which region, which country and what sector it is.

**5) How would you describe the conduct of the MDBs in relation with compliance of their own safeguard policies? If there is a lack of compliance, what in your opinion would be the first step to overcome the gap between the written policies and their full implementation?**

This question was not answered

**6) Do you think the concept of free, prior and informed consent – which is essential to guarantee that indigenous peoples' view regarding projects that will affect them is taken into**



**account – is actually being respected by MDBs?**

This question was not answered

**7) In your opinion, if the policies secured by the MDBs were all correctly implemented, would they be sufficient to guarantee indigenous' rights, or are they lacking more provisions?**

I don't think they are sufficient to guarantee indigenous rights, because they are designed to be protective, to stop violation, but they are not designed to advance realization, and I think one of the things which is really important is that indigenous peoples rights are largely not respected in full across the globe. They are respected in places and certainly quite a lot in law, but the full realization of indigenous peoples' rights is something that is a goal in the future rather than something that is achieved right now, and these safeguards they are not intended to promote the attainment of realizing indigenous peoples' rights, so by themselves, if they were fully and correctly implemented at all times, I think they would go quite a long way to reducing the violations of indigenous peoples rights, and actually would foster quite interesting and strong conversations of national levels about how indigenous rights should be better protected, but in the end the full guarantee of indigenous peoples rights rests with the States, not with the Banks, so they are helpful in that struggle, but they are not sufficient.

**8) Are the accountability mechanisms provided by the MDBs efficient enough to guarantee that violations to indigenous peoples rights are being investigated? If not, how could they be improved?**

Their own accountability mechanisms, their mandates and their roles are quite different across the institutions, and they are capable of doing some very innovative and very good assessments of what problems have been met, but accountability mechanisms are not entirely separated from the politics of the institutions and the mandate of the Inspection Panel of the World Bank, for instance, has been under reviewed a number of times and has been weakened by the Board at a number of points, so it is not fully independent from the Board. The other thing is that the Inspection Panel has

very weak powers of enforcement, so what they do is that they investigate the violation and come up with a report, a conclusion. They may or may not include recommendations in that report, they often don't, but they come up with a summary of what the violation was. So that is pretty good in terms of making sure that the rights that have been violated are investigated, but then management looks at the report and does what they call a management response. And it is only when the management response is ready that the 2 of them become public.

Victoria: and what is the management response? Is it like a solution they give to the violations that have been seen by the Panel?

Tugendhat: it could be, and certainly the ideal is that it was that, but it is often not, it is often partly the Bank saying you didn't understand properly, we don't agree with your conclusions. In other cases they would say "we understand that something did go wrong here", and if the project in question is not fully closed, than the Bank might say "we will suspend payments", or "we will create an action plan to address the results of the violations", and they create that action plan in collaboration with the Government. But the difficulty is that the Bank is not going to give more money to the Government in order to implement that action plan, so the action plan has to be implemented by the Government on its own dime, and it is very difficult for the Bank to enforce that. I am going to give you a statistics that I don't know if it's 100% right, but in my memory there is only one instance where the bank suspended funding to a country because of repeated violations of safeguards, and that was to Cambodia. And Cambodia was a tiny country that has a very little amount of borrowing from the Bank, so the Bank could choose to suspend that funding without affecting its portfolio overall. Whether the same thing would happen in a country like Brazil, I think is very unlikely. The Bank is bound into this politics as well, it's not entirely separated from them. So first the Bank has to come up with a strong action plan, and it might not do that. If it does come up with a strong action plan it then has to enforce that action plan without giving any more money to do so, and make the country do it anyway, and if the country doesn't want to do it, then the Banks get in a rather uncomfortable position where it can't force the Government to do something, about a project that is now closed. If the project is opened then there are a few more levels, because the Bank can engage in what the next disbursements of that particular project might look like, but often complaints take so long, it takes so long for

communities to realize the extent of human rights violations, to do the research necessary, to find the allies necessary to make the complaint, and then the Panel itself takes a time to conduct the investigation, and come up with a report, and then the report is circulated within the Bank, and then the Bank holds the report until it has a management response, and all of this is years. We had one in Kenya where the original loan was in 2007 I think, and the complaint was made in 2011, and the Inspection Panel report was finished in 2013. There may be some cases in which it is faster than that, I'm sure there are less complicated cases in where it's faster than that, but there is always a delay, so it's always quite near to the end of a project's life, when a complaint about that specific project is brought up, and what we have always argued is that any complaint needs to be introduced into the risk-rating of a particular country, so if you have a history of violations in a particular area, you have to include that in the risk assessment of those given countries, so the safeguards and the work of accountability mechanisms need to be fed directly back into the safeguard teams as they're developing new projects. And I don't think that feedback loop is anywhere near as efficient as it needs to be. It's a very political process. They're not just policies that need to be followed, they are policies that need to be followed in a lot of different political situations.

**9) Would you agree that the solution to have MDBs fully respecting indigenous peoples rights is only through creating a legal instrument capable of holding them accountable?**

It's a very difficult thing to conceive, that we would create a legal instrument capable of holding them accountable, because the only Institutions that can create such an instrument are the Governments, and only States can submit themselves to international legal treaties, and they're the only ones who can negotiate international legal treaties, and they have quite a lot of incentives not to do that, so I don't think it's a realistic solution. I think pushing for it and working towards it is a very very interesting way of getting closer to a solution, but my personal view is that it is not realistic to think that such a legal instrument would ever be created. However, it might be, and it is certainly something worth fighting for, and struggling for, but what actually happens might be slightly different from what people were hoping. So I think that there is a couple of pieces in here, one is that there are legal systems at the moment that exist in every country, national courts and supreme courts and constitutional courts and all the rest, and I think that the activities of MDBs currently they have impunity, so they can't be sued under national law, they can be sued for

corruption, or for bad procurement, but they can't be sued more generally than that. The institution itself is immune from prosecution, so I think that changing that would be really important, and making the MDBs no longer immune to national courts would go a long way to doing what is suggested here, creating a legal instrument that is capable of holding them accountable. That legal instrument would be national law, and national law is not always or rarely I guess in full compliance with international law, but it would go some way to creating an instrument that could hold them directly accountable.

## **7.2 APPENDIX 2 – Interview with Cathal Doyle**

Research fellow and teacher at Middlesex University (London, England).

### **1) Do you think there are pros and cons in imposing a stand-alone indigenous peoples safeguard? If yes, which are they?**

Mainly positive, and that's because of the very particular rights that are recognized as pertaining to indigenous peoples. If you look at how human rights law is developed, indigenous peoples rights are the first body rights that are really based on this idea of people trying to self-determination and of the collective dimensions of those rights over land or cultural rights or self-governance rights. That really is quite distinct from the individual human rights that we think of, and it also means when you think about environmental or social or cultural impacts that the impacts are quite different, so in order to address that you have to have special ones for them, and if you didn't have them, potentially by applying the other performance standards you would be violating the rights of indigenous peoples, because it's all about individual titling to land, or one to one consultation, so there is nothing about the collective rights and the implications of having their own government structures, how their particular relationship with lands is. So I think that is essential, if there is any disadvantages I guess it increases the complexity of the safeguard policies and they have to cross-reference, so sometimes when they're drafting these standards, looking at them you see they refer back to a standard, say on environmental and social impact assessments, and you realize actually that standard isn't adapted sufficiently to the indigenous peoples considerations, and so there can be some gaps, because they are not putting everything into those standards. It's certain aspects, so it's important that it is understood that the other standard should be interpreted in light of this particular standard, and the provisions shouldn't over-ride the standard on indigenous peoples, so there needs to be that clarity in there, which obviously adds to the complexity of the standard in itself. Maybe there are other considerations if we think about – sometimes there are indigenous and non-indigenous groups affected by the same projects, and how do you address that in the standard is a difficult thing, because ultimately it will come down to the particular circumstance and what the people in question want, so sometimes indigenous communities might say “we're happy to involve non-indigenous groups in the consultation process, together with us”; others

might say “no, we want to have that consultation on our own because we see things differently”, or have different issues and different considerations. So sometimes it’s possible that in a standard you come up with a procedure that may be inappropriate in other circumstances, so the standards need to allow that flexibility that ensures that the people themselves have the final say over how process actually Works, because the way that the process works is part of respecting their rights, and so it all comes down to implementation. But other than that I don’t see... apart from the fact that this get complex, and you could argue from the perspective of the borrowers who have to implemente them that having more standards is more difficult to implement and therefore maybe you reduce the prospect of them actually being implemented, but that is far lesser concerning than having a standard that actually legitimizes processes that would be harmful to the groups.

**2) Among the policies for indigenous peoples, what are the norms that are the less followed and which are the ones that generally get more compliance? Why do you think this happens?**

Obviously the one that has been the most challenging is consent, and just getting recognition that this is something necessary and that is possible to realize, and getting an agreement to say this is something that should be done has already been a big challenge. Until recently it didn’t have that, so that is the most challenging, but in general I suppose that when we think about the norms related to indigenous peoples they’re all inter-related, so consent is not a stand-alone piece, it links to if you’re expecting land rights, or if you’re expecting cultural rights and cultural heritage, or if you’re expecting indigenous governance institutions then by definition you would be seeking their consent, and respecting their decision, so by putting out the consent piece you’re not respecting any of the rest either. There are certain contexts where it is easier to respect those norms than others, so if there are projects where there is a general willingness of the community to proceed, then you tend to have maybe more respect for those rights. Where there is some form of opposition to the project, you have representative structures of indigenous peoples that are undermined, they’re ignored, alternative groups are created, or the consultation is just with part of the community, or the customary decision-making process are ignored, because they don’t like the answer that is coming out of those. There are probably experiences with consultation where the communities have willingness to proceed and the consultation may be more around the benefit sharing or the impacts, but there is a lot to be done there as well, but maybe more has been done

on that side than actually looking at things like consent and really recognizing the core rights of indigenous peoples and their lands, and their right to govern themselves and to self-identify as indigenous peoples. So there has been a certain amount of consultation that has happened, and there has been a certain degree of recognition of rights, but generally you find that more in the context where the people are predisposed to the project than where they're not.

Victoria: It's upon the borrowers, so the Governments, to make those consultations, right? But for instance, if they don't, or if they organize it in a very poor way, what is the role of the Bank? Should the Bank step in and do something?

Doyle: That's what these standards are essentially about, in saying that the Bank has a mission in terms of poverty alleviation. It's part of the UN Family, therefore it has obligations in relation to respecting human rights, and therefore when it loans money it needs to loan money in accordance with those objectives and responsibilities, and the safeguards are designed to insure that it is doing that, that's their purpose. So when the Bank is negotiating with the State, the borrower, it should be requiring that the borrowers comply with these standards, before loans are issued to them, so it should have a check that the State has the institutional capacity to do this, that there are appropriate laws and policies in place and that it gives guarantees that it will comply with these safeguards, so that should be its initial check. And that's where we come to what we were talking before, where in extreme cases it should issue a waiver where it says "you don't even have to apply this policy" or in other cases it's addressed in the standards when it talks about whether States have policies and procedures in place to address consultation, for example. It should look at these procedures to ensure that they're adequate in terms of complying with the standards, but in practice it may differ to the States standards, and those standards might be inadequate, and then that's where the Inspection Panel role comes in, where there is suppose to be adequate grievance processes for those people who were affected, and that leads to the question whether those processes are actually effective and do their job. So the Bank should be ensuring that the borrower has the right safeguards in place to ensure that the rights of indigenous peoples are guaranteed. The accountability mechanisms are interesting in terms, they have a degree of independence from the bank, but they're employed by the Bank, they're part of it, but they're free to critique what the Bank does, and they have done that, they do take a critical approach to what the Bank does and when they follow up on complaints

they actually have findings that the Bank hasn't complied with what they were supposed to do. But there are strong weaknesses with them, and one is obviously that they have no enforcement power internally in the Bank, and they are also looking what the Bank staff do, they are not looking on what the borrower does, they're looking on how the bank staff ensure that the borrower complies with the safeguards, but they don't have any saying over the borrower. And then they make recommendations to the Bank management, which decides whether or not it agrees with those recommendations, and it decides the actions that it will take. So they're definitely inadequate, but they are better than nothing, and they are one of the few mechanisms that are there and that actually give people some recourse to have their grievances addressed, at least on paper. And it's NGOs that take these complaints rather than local communities, because they have specialists and the capacity to do so. If you look at the performance standard and the way they are worded, the way they are structured, it's a hundred page document, in English. How many indigenous communities are going to be able to engage with it in a way that is useful to them? So you start from that already, and then you think that now you have to go through some procedural processes and find out how you do that: you have to be able to write your complaint in a way that will address the standard, because you are complaining against the standard, so there's a big hurdle there in terms of capacity, time and financial cost, and these things can take a lot of time to see through from the beginning to the end. So that is a limitation for them. And then you can go through a complaint and get a very good one, and the World Bank management just sort of says "well, we don't agree with those findings" or, even if they accept the findings, they don't have to do anything. There is a case that I have seen recently and had been taken in the United States Supreme Court, against the IFC, the private sector arm of the World Bank, in relation to a coal power plant in India, where the compliance mechanism did an investigation and found out that the IFC staff hadn't insured that the performance standard were applied properly, and the management of the IFC hadn't contested those findings. But the Bank management argued it has immunity from prosecution, and that the IFC cannot be prosecuted with this. But it went to the Supreme Court of the United States, so that's a very interesting case in relation to some of your questions about legal instruments. What happens there could have pretty significant implications for these institutions, because at the moment the management can just say "well, that's just the way it is".

### **3) How consultation with indigenous prior to projects and implementation and monitoring**



**of safeguards could be improved, since the critics are mainly towards the lack or weakness of these actions?**

This question has been answered during the conversation around question 2

**4) What do you believe is the responsibility/role of Multilateral Development Banks (MDBs) towards human rights and how should they approach human rights violations?**

They should accept that they have a responsibility to ensure human rights, and that it goes beyond that for the Banks, because if you look at the mandate of the World Bank in relation to poverty alleviation, it clearly implies responsibility to promote the realization of human rights, and the World Bank is being reluctant to engage in the language of human rights. As I mentioned in the beginning, you only find human rights inside of the indigenous peoples performance standard, for example, but in general it is kind of a phobia to talk about environmental and social issues, and that I think comes from the fact that it is a financial institution, and that you have Finance Ministers on its Board and they don't like that type of language, they don't understand it probably - at least it's my sense, because the management in the staff in the Bank can be quite engaged with these issues, and willing to work with them, but when it comes to the decision-makers they can block this language, and there's an awareness of that, so sometimes you don't use certain language because it might just get blocked. That is one issue. And concerning how should they approach human rights violations, I think they should be more proactive in the first place, when a loan is given it's given on the basis that it will promote human rights and won't do anything to harm, and where there is violation then you get into the question about what's in the interest of the community if there has been a violation, and that should guide how they respond, but it should clearly be based on certain principles. Actually having an investigation following the recommendations of that investigation, people participating in that process and feeling that they have access to some form of protective remedy, which today they don't, I feel that it has to be accessible. As you mentioned earlier, it's very difficult for people to "put" a formal complaint.

**5) How would you describe the conduct of the MDBs in relation with compliance of their own safeguard policies? If there is a lack of compliance, what in your opinion would be the**

**first step to overcome the gap between the written policies and their full implementation?**

This question has been answered during conversation around question 2

**6) Do you think the concept of free, prior and informed consent – which is essential to guarantee that indigenous peoples' view regarding projects that will affect them is taken into account – is actually being respected by MDBs?**

The short answer is no, and the reason why is because it has only been very recently recognized by them as a requirement to do so, so they have resisted that until now. For the World Bank, its policy that requires that has not yet come into force, and it will be interesting to see what happens now. What is clear is that in the past they didn't because they felt that they didn't have to (respect consent), and even in countries such as the Philippines that requires a law, there has been issues around how the Bank funded projects: the community said consent wasn't given, whereas the Government agency said consent was given. That's a challenge to put this principle in practice, because it's difficult for the Bank to ensure that the process is actually properly conducted, it's not easy to consult properly, and to inform properly and to gain the consent of a community, it takes time, and often the priorities of the Governments are different in terms of when they want to start the project, so to implement this will be challenging.

Victoria: But I think that the only way to overcome the gap between this and the full implementation may be through the pressure of outside, civil organizations and NGOs, because without this pressure it seems like they don't have incentives to really follow the rules, because of their immunity status. What do you think?

Cathal: Yes, absolutely. That's what it keeps them advancing, slowly, but also the pressure of the communities themselves, so ultimately in any project it really comes down to how united and strong community is in terms of asserting their demands, even more than the outsiders. It's very difficult to assert their position, because there will always be the argument from part of the community that it has supported this part, and then you end up with the real problem which is that the community itself suffers and is divided, and tensions and conflicts arise, and the purpose of the consent idea

is to avoid that, to try to give the space for the communities to figure out what they want through their own process, and give their own decision, and not having outsiders pulling them apart. But then how to realize that in practice is not easy, because there are obviously interests and many actors: those who are going to make a lot of money out from these projects are not going to stand by. I think it hasn't been respected by the Banks in the past, but now they have these policies and we have to see how they're going to do this. They are going to face challenges and there's going to be a lot of learning in the process, and civil society has to play a big role in monitoring them and in insisting that they actually do what they said they will do. And part of that as well comes from indigenous peoples asserting what they want and what they understand by free, prior and informed consent, and what it means for them if you're going to enter into my community, how you would have my consent. It is also a big part of empowering communities and respecting their own visions.

Victoria: Do you think the indigenous peoples are fully aware of what the policies say and what Governments should do?

Doyle: Not all, and to varying degrees. Communities who have experience with these types of projects have generally developed a lot of understanding, because they have to engage in this. Communities who have never had this experience would not know.

Victoria: Then it makes easier for Governments not to comply?

Doyle: Yes. The communities who have more experience are usually more empowered. If the Banks are talking about obtaining consent then they have to be part of the process of empowering communities to actually give it.

**7) In your opinion, if the policies secured by the MDBs were all correctly implemented, would they be sufficient to guarantee indigenous' rights, or are they lacking more provisions?**

Big question, and the answer is probably no. Because if you just apply a policy that says “I’m going to go and get your consent”, but you’re dealing with a context where the people have no other option, because maybe they have no services, no support from the Government, and everything becomes conditional on this project happening. So they are not exercising consent in the context of choice, because they have no choice really, so what needs to happen before getting to that point is to have some meaningful engagement with indigenous peoples to say what type of future do you want, what does development mean for you, what do you need for that, what are the options available, etc. That’s the context and there are a lot of issues that arise there in terms of recognition of the existence of those peoples, of their rights, States having the whole institutional capacity and not a discriminatory view of these peoples and engaging with them in a proper relationship, consensual relationship, discussing what should happen in their territories. So the policies alone are not sufficient basically. They are necessary but not sufficient.

The Banks standards not necessarily reflect everything in the UNDRIP, so that’s one thing. The current standard is much more closely aligned to it than the previous one, so that’s a step in that direction, but there are some issues there and again it will come down to the implementation of whether those differences actually become meaningful. And the second issue is that if you want to have all the pre conditions for actually implementing those policies, then all those rights need to be respected by the State, all the rights in the UNDRIP, for example. And if they’re not, then you haven’t really got the context in which you can have a proper process to decide if a project should proceed or not. The Banks haven’t necessarily committed to everything that’s in the Human Rights framework, and as the human rights framework evolves, because the Banks haven’t really committed to that, it’s going to be lagging behind. The gap exists and it might get bigger.

**8) Are the accountability mechanisms provided by the MDBs efficient enough to guarantee that violations to indigenous peoples rights are being investigated? If not, how could they be improved?**

So, if you look at some cases, as for instance one in Cambodia - it’s more the International Finance Corporation (IFC), because the IFC standards have been ahead of the World Bank’s ones. The World Bank has been catching up and the IFC is a bit more responsive than the World Bank, but they have very similar considerations, so there’s a case that the compliance advisor of the IFC looked

out in Cambodia, in a rubber plantation, and they found that the standard wasn't being complied with, and they tried to mediate, because that's the first function, trying to mediate the solution. And they have been involved for a number of years now trying to mediate between the company and the community, but when they concluded that there were failures in complying with the standards, the community didn't want the Bank to desinvest, didn't want the IFC to pull out its money and to stop funding that project. It wanted it to continue and to use its influence to pressure on the company to operate correctly, and to compensate the communities and to address the harms, so that's also an interesting question: when something goes wrong, what should happen? Because all a Bank can do is to stop funding, it doesn't really have any other control over a company or a Government, and in some cases communities might want that to happen, specially when it's the start of a project. But once the project is operational, what's in the interest of the community might be something else: might be to have some form of compensation, or to ensure that there is some other benefits, or there's a proper process in place to protect against any further violations. So that's also related to how effective these mechanisms are, so it depends a little bit on the demands of the communities, of the context in which they are operating and in that particular case, the Cambodia one, even though it's the IFC, I think it is still relevant if you're considering these issues. So that's the case where they got involved in mediation, and that's what these types of bodies can do, and sometimes that's useful, other times it's not what they want. There's a case in India around a tea plantation where the compliance found big problems with what the Bank was funding, but then the Bank management didn't do anything about it, so sometimes you have scenarios where there is a useful outcome and other times you go through the whole process and you end up with a piece of paper which says there's a problem, but the Bank itself doesn't do anything about it. Sometimes the outcome that you want is to have that entity say there's a problem, and then you use that to try to influence other investors, it can help in campaigning, but obviously it's insufficient in terms of having a real remedy to a problem.

**9) Would you agree that the solution to have MDBs fully respecting indigenous peoples rights is only through creating a legal instrument capable of holding them accountable?**

There is a question over what are the Banks' responsibilities as an international organization, so there could be developments in law that say that the Banks have at least certain obligations, and if

that was clarified, it should be conducive to the Bank being more aligned to human rights principles. There are efforts to draft a legal instrument in relation to business obligations, corporations and transnational enterprises. In the UN the process ongoing is trying to draft the treaty in relation to that, but there isn't any effort trying to draft an instrument that addresses international organizations or financial institutions. Maybe the question is more around their legal obligations: if there was greater clarity on the legal obligations of these financial institutions, would that make them more accountable? I think the answer is then yes. I wrote a book on Consent basically saying that the International Court of Justice could have a role to play in clarifying those responsibilities of international financial institutions. I think the question is more if there is clarity around their legal obligations, would that render them more accountable? And I think the answer is yes.

### **7.3 APPENDIX 3 – Interview with Juan Carlos Perafán Simmonds (Washington, United States of America)**

Inter-American Development Bank consultant on Indigenous Peoples

#### **1) Do you think there are pros and cons in imposing a stand-alone indigenous peoples safeguard? If yes, which are they?**

I think that it is necessary to have policies for indigenous peoples for one reason: when we are talking about indigenous peoples, we are talking about collective rights, and it is only them who have collective rights recognized. We are talking about collective rights to a territory, to Government, to identity, to culture, to their own education; and those rights, which are embedded in the policies, are collective rights. The right to be consulted, or the right to prior and informed consent are collective rights, not individual ones – so they are different from the other policies.

#### **2) Among the policies for indigenous peoples, what are the norms that are the less followed and which are the ones that generally get more compliance? Why do you think this happens?**

I don't think so. In the case of the indigenous peoples policies of the IDB, normally all the policies are followed, but what happens is that there is a negative side to it. They are dealing with a complex population, they put some effort into excluding the indigenous population from the project. If you have a project in Brazil, for example, and they would like to go to the Xingu, there are some exclusions, like a negative incentive that exists to exclude indigenous peoples from the scope of a project - That is the non-following part in my opinion, to exclude them from the project. Apart from that you have some parts that are difficult to accomplish in terms of policies, for example the consultation part. Sometimes they just rush into the safeguards and try to comply with them in the most economic and less time consuming management, in the sense they don't necessarily have the best practices. Apart from that, in the case of our policy, the safeguards part is obligatory, but the proactive part is not – so it is not necessarily followed, and we have problems as there are some sectors of the bank, specially the social sectors, health and education, that are very insensitive to indigenous issues: they don't want to include intercultural bilingual education, programs,

indigenous peoples, they don't want to consult indigenous peoples, they are always claiming that indigenous don't have access to some things, so why would they have to have cultural adequacy for a small part of the population. We are always in the same arguments. This is mostly related to the proactive part of the policy, not to the safeguard part of the policy.

**3) How consultation with indigenous prior to projects and implementation and monitoring of safeguards could be improved, since the critics are mainly towards the lack or weakness of these actions?**

I think it could be improved through guidelines, through methodologies that are involving a sector. And the other thing is that to make those consultations, you have to have an understanding of the kind of indigenous peoples that you are dealing with – so what I think could improve very much these consultation is a better understanding of the way of Government and of the traditional decision-making processes. So if somebody wants to make a consultation, first of all they need to see the law and how those guys are organized and legalized by the law, and be willing to understand what kind of traditional Government arrangements they have. I am sure the consultation would be more straight-forward.

Victoria: How do you think the monitoring and implementation of safeguards could be improved as well?

Perafán: Basically, what you need here is an institutional effort towards implementation and monitoring. You need to have somebody out of this structure (Government and Bank) that would be monitoring the compliance with the indigenous policies – what the Banks need is more staff to do that, and that the Governments need is more anthropologists and social specialists to accompany the project implementation. What I mean is that we need more people around the monitoring process, in the field but also in the institution. Most of the institutions lack social units of personnel that are specialists in social sciences, and this is needed. And the other thing is that they need to have participation arrangement with the communities, so that the monitoring can be done in coordination with what the perception of the indigenous affected population is. If you don't have that communication, that perception, you don't know the truly effect that you are having.



**4) What do you believe is the responsibility/role of Multilateral Development Banks (MDBs) towards human rights and how should they approach human rights violations?**

It's a very difficult question. It's very difficult for international organizations to mingle in the international affair of countries – remember that we are just Banks and we respond to the demand of the countries. We work with them because they need something, and that I know few Governments need support in human rights implementation, so if they ask us some help we would do that happily, but if they don't ask we cannot promote because we are just lenders. What we can do is to offer safeguards that protect human rights, or, as I told you, collective rights of indigenous population.

**5) How would you describe the conduct of the MDBs in relation with compliance of their own safeguard policies? If there is a lack of compliance, what in your opinion would be the first step to overcome the gap between the written policies and their full implementation?**

What you have is a mechanism, and whoever thinks that we are not in compliance on policies can go to the this mechanism and activate it, and find out with professionals if we are or are not complying with the policies. So to see how the compliance is done I would suggest you to take a list from Mecanismo Independiente and see how many cases have been activated, meaning we have not complied with. That would be better to answer your question. Unfortunately I am not involved in that mechanism, but you can find open information. My opinion would be, let's say from 1 to 10, we might be 7.5 or something like that, but it's only my impression.

**6) Do you think the concept of free, prior and informed consent – which is essential to guarantee that indigenous peoples' view regarding projects that will affect them is taken into account – is actually being respected by MDBs?**

This question was not answered

**7) In your opinion, if the policies secured by the MDBs were all correctly implemented,**

**would they be sufficient to guarantee indigenous' rights, or are they lacking more provisions?**

Possibly not. It's just a tiny part of what is needed from the Governments to comply with indigenous peoples rights, and that is precisely the reason why we have not only a safeguard policy but also proactive policies, because we are trying to influence the Governments to change the way they see or implement indigenous rights in several ways.

One thing that we concentrate a lot on is what we call the cultural adequation of public services – one thing is to give education, the other thing is to do bilingual education, the other thing is to recognize that they have their own health systems that need to be articulated to the other health services, and so on, and so on, you can find that in every single service. And this is not an issue of safeguards, it's an issue of promoting better services for indigenous peoples, better quality. This is not related to safeguards, it's related to the proactive part, so that's the reason why we have these policies in the safeguard part and in the proactive part, because doing everything right in the safeguard part won't make too much of a difference on indigenous peoples' wellbeing.

**8) Are the accountability mechanisms provided by the MDBs efficient enough to guarantee that violations to indigenous peoples rights are being investigated? If not, how could they be improved?**

Yes, I can say that these mechanisms are very efficient. They have very professional people working there. To have these mechanisms working correctly is essential for the Banks. So they do have very smart and professional people working over there, and they do investigate these issues to the core, let's say. They are independent mechanisms of the Banks, meaning that nobody at the management of the Bank has any power over these people, they are completely independent. Paid by the Banks, but completely independent. It's the better way to do it. The weak part of this mechanism is let's say the "demand" part of the equation – meaning how informed and how able are people who want to put complaints in the mechanisms. Not necessarily everyone knows about the mechanism, or has the ability to use a computer to update it (put complaints), so if there is something that may not be fully working over there, it is that part. I think more outreach should be given as well.

**9) Would you agree that the solution to have MDBs fully respecting indigenous peoples rights is only through creating a legal instrument capable of holding them accountable?**

No. We need other things. We need incentive approach, we need to act proactively and not only reactively.

#### **7.4 APPENDIX 4 – Interview with Alberto Coelho Gomes Costa (Brasília, Brazil)**

##### **World Bank consultant on Indigenous Peoples**

##### **1) Do you think there are pros and cons in imposing a stand-alone indigenous peoples safeguard? If yes, which are they?**

Pros certainly exist, as the safeguards were established due to a demand coming from the indigenous peoples themselves, some time ago, in the decade of the 80s. They felt very damaged by projects of the Bank. Thus, the safeguard responds to a demand that came from the indigenous peoples and the civil society. This is fundamental, a pro without a doubt. Regarding the cons, I can only think about what happened in the past, but I don't know to which extent this is still relevant today. In the past, it could happen that if a project involved triggering OP 4.10, the set of the World Bank indigenous safeguard policies, and thus there was the need to consult with indigenous peoples, some project managers and some clients would try to avoid keep on going with the project. Thus, a project would not happen because the borrower was not willing to deal and respect the safeguard policies. But that was my experience, and something that stood far behind. It happened only in the beginning of the policy, and it didn't take long for stakeholders to acknowledge the importance of making the interventions as needed and according with the policies. Apart from this, I do not see any other disadvantage. I can currently only see the positive side of it, which is the commitment to answer to a legitimate social demand.

##### **2) Among the policies for indigenous peoples, what are the norms that are the less followed and which are the ones that generally get more compliance? Why do you think this happens?**

It is really hard to tell you if there is something that is not fulfilled, not followed by the policies. All the consultations are done, for instance, and we have to always take into account the principle of proportionality. This comes from the fact that projects have different levels of risks. For example, managing a project that is driven by a community demand, the community's desire for territorial protection, has a certain risk; conducting a major infrastructure work near an indigenous land has a much higher risk. So all consultations must take into account the risk proportionality,

and I think this has been done, I do not see anything not being met in terms of the requirements of indigenous peoples' policies, at least in my experience.

**3) How consultation with indigenous prior to projects and implementation and monitoring of safeguards could be improved, since the critics are mainly towards the lack or weakness of these actions?**

Our usual practice is to carry out implementation follow-up measures, twice per year, so each semester. But it also varies with the degree of risk that a certain project carries. If a project is harder to be implemented, we can always increase the number of visits, for instance. Thus, this is a parameter and not a rule – as I said, it varies according to the principle of proportionality. Field surveys are conducted, conversations with beneficiaries, document analysis and bank experts are always consulted by clients.

**4) What do you believe is the responsibility/role of Multilateral Development Banks (MDBs) towards human rights and how should they approach human rights violations?**

As the bank is part of the United Nations, human rights are necessarily embedded in our practice. Even if it is not explicitly stated, it is something that is embedded in the institution's performance. The bank is part of this institutionality.

**5) How would you describe the conduct of the MDBs in relation with compliance of their own safeguard policies? If there is a lack of compliance, what in your opinion would be the first step to overcome the gap between the written policies and their full implementation?**

My experience is with the World Bank only, and a bit with the IFC, so I don't feel qualified to answer to such question.

**6) Do you think the concept of free, prior and informed consent – which is essential to guarantee that indigenous peoples' view regarding projects that will affect them is taken into account – is actually being respected by MDBs?**

This question was not answered

**7) In your opinion, if the policies secured by the MDBs were all correctly implemented, would they be sufficient to guarantee indigenous' rights, or are they lacking more provisions?**

Let's go back to the first answer, and it also involves some of the criticisms that were made towards the Bank's new policies. The first reaction was that the power of safeguard policies could not be dismantled, so that the interests of the people who felt benefited by them were considered. The second was very supportive of the idea of using consent, even though there are some people who oppose to it for a number of reasons that are not worth mentioning. I think that the Bank's idea is to be even more engaged in relation to those 3 specific areas that already demanded a more intense consultation, and going towards an idea of consent in those same 3 situations reveals a tendency, which is the tendency to protect and safeguard the rights of indigenous peoples. Greater participation, greater acceptance, greater commitment, and ethnic and cultural development of indigenous peoples.

**8) Are the accountability mechanisms provided by the MDBs efficient enough to guarantee that violations to indigenous peoples rights are being investigated? If not, how could they be improved?**

Good question. Are you referring to Brazil alone or to the world? To the world is complicated. Well, the first important thing is to actually have such mechanisms. Nowadays, in addition to the Inspection Panel, all the Bank's projects have a complaint registration mechanism and the Bank's response mechanism. So there is an intensification of requiring that all bank-funded projects have a dedicated mechanism for receiving and responding to complaints in a way that promotes people's participation and prevents them from feeling constrained in any way. There are complaint mechanisms at the project level, and at the Bank level, so in terms of accountability there are some solid channels that are developing - more robust ones and I believe more effective as well. So it is

about solving the issues before they become a problem. This is the direction we have to take: to safeguard is to prevent problems from occurring.

I will highlight an important feature of the Bank projects in Brazil for you to understand: for a long time we have not supported any large infrastructures project, and we have been instead mostly working with indigenous peoples in situations that involve ethno-development, which means to let them choose the solutions they think work the best for them, and we support the solutions they have for their demands. Our work has been much more in the sense of environmental and territorial management planning, such as the project that we have in Acre today, which supported the elaboration of 34 Indigenous Territorial Management Plan. So it is a truly participatory strategy, where the issues and the challenges of a certain community are identified, alongside the threats they face, and the aim is to support the activities the communities identify as priorities for dealing with that system. So the big impacts of an infrastructure project have not been on our radar lately.

**9) Would you agree that the solution to have MDBs fully respecting indigenous peoples rights is only through creating a legal instrument capable of holding them accountable?**

Let's go back: what would be the country-level standards, considering different countries, which would better safeguard the rights of indigenous peoples than the safeguards that the multilateral institutions are currently supporting? I think that the questions can be asked in a different way, that's what I mean. In Brazil, for instance, we do not have a legislation today that is stricter in its demands than the new proposal of the World Bank's indigenous peoples standard. The World Bank safeguards policies remain a world reference in this sense. So the Bank is responsible for complying with this rule, and that is why it has all the instances of control to which it has to respond. Would you suggest it to be a stronger international standard?

I will give you a benchmark: until very recently, at the Bank, we didn't have safeguards to deal with gender issues. Actually, we still don't have them. However, nothing has prevented us in recent years from using it as a good practice, and raising the issues as good practice by talking to our clients and showing them the importance of addressing this issue, and how development and life in general can be improved once you tackle issues of gender equity. I am currently doing a similar thing, which is to deal with accessibility issues for people with special needs. I like to say that more important than having a command and control in your own hand is to have the ability to talk,

persuade, and make people cooperate with good goals. Safeguards impose an obligation, but the fact of not having a safeguard does not prevent good practices from being spread and stimulated.



**7.5 APPENDIX 5 – Comparison Table between Indigenous Peoples’ Safeguard Policies from the World Bank, the Asian Development Bank and the Inter-American Development Bank**

	<b>World Bank</b>	<b>Asian Development Bank</b>	<b>Inter-American Development Bank</b>
<b>Introduction / Definitions</b>	<p>“The Bank recognizes that the identities and cultures of Indigenous Peoples are inextricably linked to the lands on which they live and the natural resources on which they depend. These distinct circumstances expose Indigenous Peoples to different types of risks and levels of impacts from development projects, including loss of identity, culture, and customary livelihoods, as well as exposure to disease. Gender and intergenerational issues among Indigenous Peoples also are complex. As social groups with identities that are often distinct from dominant groups in their national societies, Indigenous Peoples are frequently among the most marginalized and vulnerable segments of the population. As a result, their economic, social, and legal status often limits their capacity to defend their interests in and rights to lands, territories, and other productive resources, and/or restricts their ability to participate in and benefit from development. At the same time, the Bank recognizes that Indigenous Peoples play a vital role in sustainable development and that their rights are increasingly being addressed under both domestic and international law” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.1, 2005)</p>	<p>“The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly in September 2007. Many countries in Asia and the Pacific have voted in favor of this nonbinding declaration. The Asian Development Bank (ADB) recognizes the rights of Indigenous Peoples to direct the course of their own development. Indigenous Peoples do not automatically benefit from development, which is often planned and implemented by those in the mainstream or dominant population in the countries in which they live. Special efforts are needed to engage Indigenous Peoples in the planning of development programs that affect them, in particular, development programs that are supposedly designed to meet their specific needs and aspirations. Indigenous Peoples are increasingly threatened as development programs infringe into areas that they traditionally own, occupy, use, or view as ancestral domain” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 55, 2009)</p>	<p>“Development with identity of indigenous peoples refers to a process that includes the strengthening of indigenous peoples, harmony with their environment, sound management of territories and natural resources, the generation and exercise of authority, and respect for indigenous rights, including the cultural, economic, social and institutional rights and values of indigenous peoples in accordance with their own worldview and governance. This concept rests on the principles of equity, wholeness, reciprocity, and solidarity and seeks to consolidate the conditions for indigenous peoples and their constituents to thrive and grow in harmony with their surroundings, and in so doing, tapping for that purpose, in accordance with their own priorities, the potential of their cultural heritage, natural assets, and social capital” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 5, 2006)</p>

Objectives	<p>“This policy contributes to the Bank's mission of poverty reduction and sustainable development by ensuring that the development process fully respects the dignity, human rights, economies, and cultures of Indigenous Peoples” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.1, 2005)</p>	<p>“The objective is to design and implement projects in a way that fosters full respect for Indigenous Peoples’ identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the Indigenous Peoples themselves so that they (i) receive culturally appropriate social and economic benefits, (ii) do not suffer adverse impacts as a result of projects, and (iii) can participate actively in projects that affect them” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 55, 2009)</p>	<p>“The objective of this policy is to enhance the Bank’s contribution to the development of indigenous peoples by supporting the region’s national governments and indigenous peoples in achieving the following objectives:</p> <p>(a) Support the development with identity of indigenous peoples, including strengthening their capacities for governance.</p> <p>(b) Safeguard indigenous peoples and their rights against adverse impacts and exclusion in Bankfunded development projects” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 6, 2006)</p>
Scope of Application		<p>“The requirements apply to all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees (hereafter broadly referred to as projects). The requirements also cover actions conducted by the borrower/client in anticipation of ADB projects” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 55, 2009)</p>	<p>“The policy applies to the Inter-American Development Bank and the Multilateral Investment Fund. Activities and instruments subject to the present policy include all Bank-supported operations and activities, including financial and nonfinancial products” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 6, 2006)</p>

<p><b>Who are “Indigenous Peoples”</b></p>	<p>“For purposes of this policy, the term “Indigenous Peoples” is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (d) an indigenous language, often different from the official language of the country or region” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.1, 2005)</p>	<p>“For operational purposes, the term Indigenous Peoples is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 56, 2009).</p>	<p>“For the purposes of this policy, the term indigenous peoples refers to those who meet the following three criteria: (i) they are descendants from populations inhabiting Latin America and the Caribbean at the time of the conquest or colonization; (ii) irrespective of their legal status or current residence, they retain some or all of their own social, economic, political, linguistic and cultural institutions and practices; and (iii) they recognize themselves as belonging to indigenous or pre-colonial cultures or peoples” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 5, 2006)</p>
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Use of Country Systems	<p>“The Bank may decide to use a country’s systems to address environmental and social safeguard issues in a Bank-financed project that affects Indigenous Peoples. This decision is made in accordance with the requirements of the applicable Bank policy on country systems” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.2, 2005)</p>	<p>“In considering these characteristics (that define the term “indigenous peoples”), national legislation, customary law, and any international conventions to which the country is a party will be taken into account” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 55, 2009)</p>	<p>“Indigenous juridical systems will be taken into account according to the rules for their recognition established in the legislation of each country. In the absence of such rules these systems will be recognized whenever they are consistent with national legislation and do not contradict fundamental rights established in national legislation and in international norms” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 5, 2006)</p>
Evaluation/Screening	<p>“For all projects that are proposed for Bank financing and affect Indigenous Peoples, the Bank requires the borrower to engage in a process of free, prior, and informed consultation. The Bank provides project financing only where free, prior, and informed consultation results in broad community support to the project by the affected Indigenous Peoples. Such Bank-financed projects include measures to (a) avoid potentially adverse effects on the Indigenous Peoples’ communities; or (b) when avoidance is not feasible, minimize, mitigate, or compensate for such effects. Bank-financed projects are also designed to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate and gender and intergenerationally inclusive.</p>	<p>“The borrower/client will undertake meaningful consultation with affected Indigenous Peoples to ensure their informed participation in (i) designing, implementing, and monitoring measures to avoid adverse impacts on them or, when avoidance is not possible, to minimize, mitigate, and compensate for such effects; and (ii) tailoring project benefits that accrue to them in a culturally appropriate manner.</p> <p>When screening by ADB confirms likely impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced experts to carry out a full social impact assessment (SIA), and if impacts on Indigenous Peoples are identified, the borrower/client will prepare an IPP in conjunction with the feasibility study.</p>	<p>“The Bank will require and verify that the project proponent conduct an evaluation to determine the seriousness of potential adverse impacts on physical and food security, lands, territories, resources, society, rights, the traditional economy, way of life and identity or cultural integrity of indigenous peoples, and to identify the indigenous peoples affected and their legitimate representatives and internal decision-making procedures. This evaluation will include preliminary consultations with potentially affected indigenous peoples. When potential adverse impacts are identified, the Bank will require and verify that the project proponent incorporate the design and implementation of the measures necessary</p>

Evaluation/Screening (cont.)	<p>A project proposed for Bank financing that affects Indigenous Peoples requires: (a) screening by the Bank to identify whether Indigenous Peoples are present in, or have collective attachment to, the project area (see paragraph 8); (b) a social assessment by the borrower (see paragraph 9 and Annex A) (c) a process of free, prior, and informed consultation with the affected Indigenous Peoples' communities at each stage of the project, and particularly during project preparation, to fully identify their views and ascertain their broad community support for the project (see paragraphs 10 and 11); (d) the preparation of an Indigenous Peoples Plan (see paragraph 12 and Annex B) or an Indigenous Peoples Planning Framework (see paragraph 13 and Annex C); and (e) disclosure of the draft Indigenous Peoples Plan or draft Indigenous Peoples Planning Framework (see paragraph 15)" (World Bank Operational Manual 4.10 – Indigenous Peoples, p.2, 2005)</p>	<p>The project's potential social impacts and risks will be assessed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to Indigenous Peoples matters, including host country obligations under international law.</p> <p>When screening by ADB confirms likely impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced experts to carry out a full social impact assessment (SIA), and if impacts on Indigenous Peoples are identified, the borrower/client will prepare an IPP in conjunction with the feasibility study. The project's potential social impacts and risks will be assessed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to Indigenous Peoples matters, including host country obligations under international law"</p> <p>(Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 56, 2009)</p>	<p>to minimize or prevent such adverse impacts, including consultation and good faith negotiation processes consistent with the legitimate decision-making mechanisms of affected indigenous peoples or groups, mitigation measures, monitoring, and fair compensation.</p> <p>Taking into account the perspectives of indigenous peoples, the Bank will systematically perform a technical review of all operations submitted for its consideration in the programming and identification stages in order to determine whether indigenous peoples might be affected by the operation and identify potential impacts and benefits, be they direct, indirect, cumulative or regional. Depending on the nature, scope, and intensity of the impacts and benefits identified, the Bank will determine the level of analysis needed to address indigenous issues, including sociocultural analyses and consultation and good faith negotiation processes. This review will be performed by the responsible Bank division. If the project so warrants, the review will rely on experts in indigenous issues and, whenever possible, on inputs from the indigenous peoples who might be affected by the project"</p> <p>(Inter-American Development Bank Operational Policy on</p>
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			Indigenous Peoples, p. 8, 2006)
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Consultation	<p>“Where the project affects Indigenous Peoples, the borrower engages in free, prior, and informed consultation with them. To ensure such consultation, the borrower:</p> <p>(a) establishes an appropriate gender and intergenerationally inclusive framework that provides opportunities for consultation at each stage of project preparation and implementation among the borrower, the affected Indigenous Peoples’ communities, the Indigenous Peoples Organizations (IPOs) if any, and other local civil society organizations (CSOs) identified by the affected Indigenous Peoples’ communities;</p> <p>(b) uses consultation methods appropriate to the social and cultural values of the affected Indigenous Peoples’ communities and their local conditions and, in designing these methods, gives special attention to the concerns of Indigenous women, youth, and children and their access to development opportunities and benefits; and</p> <p>(c) provides the affected Indigenous Peoples’ communities with all relevant information about the project (including an assessment of potential adverse effects of the project on the affected Indigenous Peoples’ communities) in a culturally appropriate manner at each stage of project preparation and implementation”</p> <p>(World Bank Operational Manual 4.10 – Indigenous Peoples, p.2, 2005)</p>	<p>“To carry out meaningful consultation with affected Indigenous Peoples, the borrower/client will establish a context-specific strategy for inclusive and participatory consultation, including approaches of identifying appropriate Indigenous Peoples representatives, and consultation methods appropriate to the social and cultural values of the affected Indigenous Peoples communities. The borrower/client will pay special attention to the concerns of indigenous women and youth. Meaningful consultation is a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues. Consultation will be carried out in a manner commensurate with the impacts on affected communities. The consultation process and its results will be documented and reflected in the Indigenous Peoples plan (IPP)”</p>	<p>“Indigenous culture, identity, language, and traditional knowledge. In recognition of the special sociocultural and linguistic characteristics of indigenous peoples, Bank operations will include such measures as are necessary to protect these assets from potential adverse impacts. In relevant projects, a consultation and good faith negotiation process will be used to identify the potential risks and impacts and to design and implement socioculturally appropriate measures</p> <p>Transborder indigenous peoples. In regional projects involving two or more countries or in border areas where indigenous peoples are present, the Bank will adopt such measures as are necessary to contravene adverse impacts of its projects that might affect transborder peoples. These will include consultation and good faith negotiation processes, legal security and territorial control programs, and other culturally appropriate programs related to rights and priorities in health, freedom of movement, dual nationality (within the context of the applicable legal norms), and cultural, social, and economic integration between the affected peoples, among others”</p> <p>(Inter-American Development Bank</p>
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			Operational Policy on Indigenous Peoples, p. 9, 2006)
Consult. (cont.)		(Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 56, 2009)	



Social Assessment	<p>“In deciding whether to proceed with the project, the borrower ascertains, on the basis of the social assessment (see paragraph 9) and the free, prior, and informed consultation (see paragraph 10), whether the affected Indigenous Peoples’ communities provide their broad support to the project. Where there is such support, the borrower prepares a detailed report that documents:</p> <ul style="list-style-type: none"> <li>(a) the findings of the social assessment;</li> <li>(b) the process of free, prior, and informed consultation with the affected Indigenous Peoples’ communities</li> <li>(c) additional measures, including project design modification, that may be required to address adverse effects on the Indigenous Peoples and to provide them with culturally appropriate project benefits;</li> <li>(d) recommendations for free, prior, and informed consultation with and participation by Indigenous Peoples’ communities during project implementation, monitoring, and evaluation; and</li> <li>(e) any formal agreements reached with Indigenous Peoples’ communities and/or the IPOs”</li> </ul> <p>(World Bank Operational Manual 4.10 – Indigenous Peoples, p.3, 2005)</p>	<p>“Based on the screening, a field-based SIA will be conducted either as part of the feasibility study or as a stand-alone activity. The SIA will, in a gender-sensitive manner, in consultation with Indigenous Peoples communities, identify the project-affected Indigenous Peoples and the potential impacts of the proposed project on them. The SIA will provide a baseline socioeconomic profile of the indigenous groups in the project area and project impact zone; assess their access to and opportunities to avail themselves of basic social and economic services; assess the short- and long-term, direct and indirect, and positive and negative impacts of the project on each group’s social, cultural, and economic status; assess and validate which indigenous groups will trigger the Indigenous Peoples policy principles; and assess the subsequent approaches and resource requirements for addressing the various concerns and issues of projects that affect them” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 57, 2009)</p>	
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Consent/Community Support	<p>“The Bank reviews the process and the outcome of the consultation carried out by the borrower to satisfy itself that the affected Indigenous Peoples’ communities have provided their broad support to the project. The Bank pays particular attention to the social assessment and to the record and outcome of the free, prior, and informed consultation with the affected Indigenous Peoples’ communities as a basis for ascertaining whether there is such support. The Bank does not proceed further with project processing if it is unable to ascertain that such support exists”</p> <p>(World Bank Operational Manual 4.10 – Indigenous Peoples, p.3, 2005)</p>	<p>“For purposes of policy application, consent of affected Indigenous Peoples communities refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for the project activities listed in para. 30. Such broad community support may exist even if some individuals or groups object to the project activities.</p> <p>Where broad community support has been ascertained, the borrower/client will provide documentation that details the process and outcomes of consultations with Indigenous Peoples and Indigenous Peoples’ organizations, including (i) the findings of the SIA; (ii) the process of meaningful consultation with the affected Indigenous Peoples communities; (iii) the additional measures, including project design modification, that may be required to address adverse impacts on the Indigenous Peoples and to provide them with culturally appropriate project benefits; (iv) the recommendations for meaningful consultation with and participation by Indigenous Peoples communities during project implementation, monitoring, and evaluation; and (v) the content of any formal agreements reached with Indigenous Peoples communities and/or Indigenous Peoples’ organizations”</p> <p>(Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 60, 2009)</p>	<p>“For cases of particularly significant potential adverse impacts that carry a high degree of risk to the physical, territorial or cultural integrity of the affected indigenous peoples or groups, the Bank will further require and verify that the project proponent demonstrate that it has, through a good faith negotiation process, obtained agreements regarding the operation and measures to address the adverse impacts as necessary to support, in the Bank’s judgment, the sociocultural viability of the operation”</p> <p>(Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 8, 2006)</p>
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<p style="text-align: center;">Indigenous Peoples Plan (IPP)</p>	<p>“On the basis of the social assessment and in consultation with the affected Indigenous Peoples’ communities, the borrower prepares an Indigenous Peoples Plan (IPP) that sets out the measures through which the borrower will ensure that (a) Indigenous Peoples affected by the project receive culturally appropriate social and economic benefits; and (b) when potential adverse effects on Indigenous Peoples are identified, those adverse effects are avoided, minimized, mitigated, or compensated for (see Annex B for details). The IPP is prepared in a flexible and pragmatic manner, and its level of detail varies depending on the specific project and the nature of effects to be addressed. The borrower integrates the IPP into the project design. When Indigenous Peoples are the sole or the overwhelming majority of direct project beneficiaries, the elements of an IPP should be included in the overall project design, and a separate IPP is not required. In such cases, the Project Appraisal Document (PAD) includes a brief summary of how the project complies with the policy, in particular the IPP requirements” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.3, 2005)</p>	<p>“If the screening and SIA indicate that the proposed project will have impacts, positive and/or negative, on Indigenous Peoples, the borrower/client will prepare an IPP in the context of the SIA and through meaningful consultation with the affected Indigenous Peoples communities. The IPP will set out the measures whereby the borrower/client will ensure (i) that affected Indigenous Peoples receive culturally appropriate social and economic benefits; and (ii) that when potential adverse impacts on Indigenous Peoples are identified, these will be avoided to the maximum extent possible. Where this avoidance is proven to be impossible, based on meaningful consultation with indigenous communities, the IPP will outline measures to minimize, mitigate, and compensate for the adverse impacts. The level of detail and comprehensiveness of IPPs (annex to this appendix) will vary depending on the specific project and the nature of impacts to be addressed. The borrower/client will integrate the elements of the IPP into the project’s design” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 57, 2009)</p>	
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Disclosure of Information	<p>“The borrower makes the social assessment report and draft IPP/IPPF available to the affected Indigenous Peoples’ communities in an appropriate form, manner, and language. Before project appraisal, the borrower sends the social assessment and draft IPP/IPPF to the Bank for review. Once the Bank accepts the documents as providing an adequate basis for project appraisal, the Bank makes them available to the public in accordance with The World Bank Policy on Access to Information, and the borrower makes them available to the affected Indigenous Peoples’ communities in the same manner as the earlier draft documents”</p> <p>(World Bank Operational Manual 4.10 – Indigenous Peoples, p.4, 2005)</p>	<p>“The borrower/client will submit to ADB the following documents to disclose on ADB’s website:</p> <ul style="list-style-type: none"> <li>(i) a draft IPP and/or Indigenous Peoples planning framework, including the social impact assessment, endorsed by the borrower/client, before appraisal;</li> <li>(ii) the final IPP upon completion;</li> <li>(iii) a new or updated IPP and a corrective action plan prepared during implementation, if any; and</li> <li>(iv) the monitoring reports.</li> </ul> <p>The borrower/client will provide relevant information, including information from the above documents in a timely manner, in an accessible place and in a form and language(s) understandable to the affected Indigenous Peoples and other stakeholders. If the Indigenous Peoples are illiterate, other appropriate communication methods will be used”</p> <p>(Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 58, 2009)</p>	<p>“The Bank will periodically evaluate the implementation of this policy and the achievement of its objectives through independent reviews that will include consultations with national governments, indigenous peoples, the private sector and civil society. The first evaluation will take place no later than five years from the entry into effect of the policy, with the understanding that the Administration or the Board of Executive Directors may initiate partial evaluations prior to this date. The results of the evaluations will be presented to the Board of Executive Directors and disseminated in accordance with the Bank’s Policy on Disclosure of Information (OP-102)”</p> <p>(Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 11, 2006)</p>
Special Considerations	<p>“Indigenous Peoples are closely tied to land, forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. In this situation, when carrying out the social assessment and preparing the IPP/IPPF, the borrower pays particular attention to:</p>	<p>“Ancestral Domains and Lands and Related Natural Resources Indigenous Peoples are closely tied to land, forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. In this situation, when carrying out the social impact assessment and preparing the IPP, the borrower/client will pay particular attention to the following:</p>	<p>“Territories, land, and natural resources. Operations that directly or indirectly affect the legal status, possession, or management of territories, lands, or natural resources traditionally occupied or used by indigenous peoples will include specific safeguards, consistent with the applicable legal framework regarding ecosystem and land protection.</p>

<p>Special Considerations (cont.1)</p>	<p>(a) the customary rights of the Indigenous Peoples, both individual and collective, pertaining to lands or territories that they traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihoods; (b) the need to protect such lands and resources against illegal intrusion or encroachment; (c) the cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources; and (d) Indigenous Peoples' natural resources management practices and the long-term sustainability of such practices. If the project involves (a) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied (such as land titling projects), or (b) the acquisition of such lands, the IPP sets forth an action plan for the legal recognition of such ownership, occupation, or usage. Normally, the action plan is carried out before project implementation; in some cases, however, the action plan may need to be carried out concurrently with the project itself. Such legal recognition may take the following forms:</p> <p>(a) full legal recognition of existing customary land tenure systems of Indigenous Peoples; or (b) conversion of customary usage rights to communal and/or individual ownership rights” (World Bank Operational Manual 4.10 – Indigenous Peoples, p. 4, 2005)</p>	<p>(i) the customary rights of the Indigenous Peoples, both individual and collective, pertaining to ancestral domains, lands, or territories that they traditionally own or customarily use or occupy, and where access to natural resources is vital to the sustainability of their cultures and livelihood systems; (ii) the need to protect such ancestral domains, lands, and resources against illegal intrusion or encroachment; (iii) the cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources; (iv) the Indigenous Peoples' natural resources management practices and the long-term sustainability of such practices; and (v) the need to rehabilitate the livelihood systems of Indigenous Peoples who have been evicted from their lands. If the project involves activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, such as land titling projects, or the acquisition of such lands, the borrower/client will integrate an action plan for the legal recognition of customary rights to such lands, territories, and ancestral domains in the IPP. The action plan is normally carried out before project implementation, but in some cases it may need to be formulated concurrently with the project itself. Such legal recognition may take the following forms: (i) full legal</p>	<p>One of those safeguards is respect for the rights recognized in accordance with the applicable legal norms. In projects for natural resource extraction and management and protected areas management, safeguards include: (i) prior consultation mechanisms to preserve the physical, cultural, and economic integrity of the affected peoples and the sustainability of the protected areas and natural resources; (ii) mechanisms for the participation of indigenous peoples in the utilization, administration and conservation of these resources; (iii) fair compensation for any damage these peoples might suffer as a result of the project; and (iv) whenever possible, participation in project benefits. Where legal or administrative protection is insufficient to ensure that the project will not directly or indirectly cause the deterioration of the physical integrity or legal status of the affected lands, territories or resources, the project will include the pertinent restrictions or corrective or compensatory measures” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 8, 2006)</p>
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Special Considerations (cont. 2)		recognition of existing customary land tenure systems of Indigenous Peoples, or (ii) conversion of customary usage rights to communal and/or individual ownership rights” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 59, 2009)	
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Commercial Development of Natural and Cultural Resources	<p>“If the project involves the commercial development of natural resources (such as minerals, hydrocarbon resources, forests, water, or hunting/fishing grounds) on lands or territories that Indigenous Peoples traditionally owned, or customarily used or occupied, the borrower ensures that as part of the free, prior, and informed consultation process the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on the Indigenous Peoples’ livelihoods, environments, and use of such resources. The borrower includes in the IPP arrangements to enable the Indigenous Peoples to share equitably in the benefits to be derived from such commercial development; at a minimum, the IPP arrangements must ensure that the Indigenous Peoples receive, in a culturally appropriate manner, benefits, compensation, and rights to due process at least equivalent to that to which any landowner with full legal title to the land would be entitled in the case of commercial development on their land.</p> <p>If the project involves the commercial development of Indigenous Peoples’ cultural resources and knowledge (for example, pharmacological or artistic), the borrower ensures that as part of the free, prior, and informed consultation process, the affected communities are</p>	<p>“If the project involves the commercial development of Indigenous Peoples’ cultural resources and knowledge, the borrower/client will ensure that the affected communities are informed of (i) their rights to such resources under statutory and customary law; (ii) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (iii) the potential effects of such development on Indigenous Peoples’ livelihoods, environment, and use of such resources. The IPP will reflect the nature and content of agreements and will include arrangements to ensure that Indigenous Peoples receive an equitable share of the benefits to be derived from such commercial development in a culturally appropriate way. Indigenous Peoples may be particularly vulnerable when project activities include (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical displacement from traditional or customary lands; and (iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. In deciding whether to proceed with a project involving such project activities, the borrower/client will seek the consent of affected Indigenous Peoples communities.</p>	<p>“Indigenous culture, identity, language, and traditional knowledge. In recognition of the special sociocultural and linguistic characteristics of indigenous peoples, Bank operations will include such measures as are necessary to protect these assets from potential adverse impacts. In relevant projects, a consultation and good faith negotiation process will be used to identify the potential risks and impacts and to design and implement socioculturally appropriate measures. In case of commercial development of indigenous cultural and knowledge resources, the Bank will require prior agreement by the affected peoples that includes safeguards for intellectual property and traditional knowledge, as well as provisions for their equitable participation in the benefits derived from such commercial development” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 9, 2006)</p>
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	informed of (a) their rights to such resources under statutory		
Commercial Development of Natural and Cultural Resources (cont.)	<p>and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on Indigenous Peoples' livelihoods, environments, and use of such resources.</p> <p>Commercial development of the cultural resources and knowledge of these Indigenous Peoples is conditional upon their prior agreement to such development. The IPP reflects the nature and content of such agreements and includes arrangements to enable Indigenous Peoples to receive benefits in a culturally appropriate way and share equitably in the benefits to be derived from such commercial development” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.4, 2005)</p>	<p>If the project involves the commercial development of natural resources (such as minerals, hydrocarbons, forests, water, or hunting or fishing grounds) within customary lands under use by Indigenous Peoples, the borrower/client will ensure that the affected communities are informed of (i) their rights to such resources under statutory and customary law; (ii) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (iii) the potential effects of such development on the Indigenous Peoples' livelihoods, environment, and use of such resources. The borrower/client will include in the IPP arrangements to enable the Indigenous Peoples to receive in a culturally appropriate manner an equitable share of the benefits to be derived from such commercial development that is at least equal to or higher than that of any other affected landowners”</p> <p>(Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 60, 2009)</p>	



Physical Relocation of Indigenous Peoples	<p>“Because physical relocation of Indigenous Peoples is particularly complex and may have significant adverse impacts on their identity, culture, and customary livelihoods, the Bank requires the borrower to explore alternative project designs to avoid physical relocation of Indigenous Peoples. In exceptional circumstances, when it is not feasible to avoid relocation, the borrower will not carry out such relocation without obtaining broad support for it from the affected Indigenous Peoples’ communities as part of the free, prior, and informed consultation process. In such cases, the borrower prepares a resettlement plan in accordance with the requirements of OP 4.12, <i>Involuntary Resettlement</i>, that is compatible with the Indigenous Peoples’ cultural preferences, and includes a land-based resettlement strategy. As part of the resettlement plan, the borrower documents the results of the consultation process. Where possible, the resettlement plan should allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned, or customarily used or occupied, if the reasons for their relocation cease to exist.” (World Bank Operational Manual 4.10 – Indigenous Peoples, p.5, 2005)</p>	<p>“The borrower/client will explore to the maximum extent possible alternative project designs to avoid physical displacement of Indigenous Peoples that will result in adverse impacts on their identity, culture, and customary livelihoods. In exceptional circumstances, when avoidance is impossible, the borrower/client will prepare an IPP that could be combined with a resettlement plan. Such a combined plan needs to be compatible with the Indigenous Peoples’ cultural preferences and will include a land-based resettlement strategy. Where possible, the plan will allow the affected Indigenous Peoples to return to the lands and territories they traditionally owned or customarily used or occupied if the reasons for their relocation cease to exist. The plan should include provisions to rehabilitate such lands, if needed” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 61, 2009)</p>	<p>“For cases of particularly significant potential adverse impacts that carry a high degree of risk to the physical, territorial or cultural integrity of the affected indigenous peoples or groups, the Bank will further require and verify that the project proponent demonstrate that it has, through a good faith negotiation process, obtained agreements regarding the operation and measures to address the adverse impacts as necessary to support, in the Bank’s judgment, the sociocultural viability of the operation” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 8, 2006)</p>
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<p style="text-align: center;"><b>Indigenous Peoples and Development</b></p>	<p>“In furtherance of the objectives of this policy, the Bank may, at a member country’s request, support the country in its development planning and poverty reduction strategies by providing financial assistance for a variety of initiatives designed to:</p> <p>(a) strengthen local legislation, as needed, to establish legal recognition of the customary or traditional land tenure systems of Indigenous Peoples;</p> <p>(b) make the development process more inclusive of Indigenous Peoples by incorporating their perspectives in the design of development programs and poverty reduction strategies, and providing them with opportunities to benefit more fully from development programs through policy and legal reforms, capacity building, and free, prior, and informed consultation and participation;</p> <p>(c) support the development priorities of Indigenous Peoples through programs (such as community-driven development programs and locally managed social funds) developed by governments in cooperation with Indigenous Peoples;</p> <p>(d) address the gender and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children;</p> <p>(e) prepare participatory profiles of Indigenous Peoples to document their culture, demographic structure, gender and intergenerational relations and social organization, institutions, production systems, religious beliefs, and resource use patterns;</p> <p>(f) strengthen the capacity of Indigenous Peoples’ communities and IPOs to prepare, implement, monitor, and evaluate development programs;</p> <p>(g) strengthen the capacity of government agencies responsible for providing development services to Indigenous Peoples;</p>	<p>“In furtherance of the objectives to benefit Indigenous Peoples, developing member countries can ask ADB to support them in their development planning and poverty reduction strategies by providing financial assistance for a variety of initiatives, such as the following:</p> <p>(i) strengthen local legislation to establish legal recognition of the customary or traditional land tenure systems of Indigenous Peoples;</p> <p>(ii) enhance participation by Indigenous Peoples in the development process by incorporating their perspectives into the design of development programs and poverty reduction strategies and providing them with opportunities to benefit more fully from development programs through policy and legal reforms, capacity building, and meaningful consultations, participation, and empowerment;</p> <p>(iii) support the development priorities of Indigenous Peoples through programs developed by governments in cooperation with Indigenous Peoples;</p> <p>(iv) address the gender and intergenerational issues that exist among many Indigenous Peoples, including the special needs of indigenous women, youth, and children;</p> <p>(v) prepare participatory profiles of Indigenous Peoples to document their culture, demographic structure, gender and intergenerational relations, and social organization, institutions, production systems, religious beliefs, and resource use patterns;</p> <p>(vi) strengthen the capacity of Indigenous Peoples communities and Indigenous Peoples’ organizations to prepare, implement, monitor, and evaluate development programs;</p> <p>(vii) strengthen the capacity of government agencies responsible for providing development services to</p>	<p>“The Bank will implement the necessary measures to eliminate the barriers to entry faced by indigenous peoples and, whenever technically viable and feasible, will ensure equality of conditions for indigenous participation as direct beneficiaries, permanent staff, and suppliers of goods and services in Bank-financed contracts. Such measures will be consistent with the Bank’s procurement norms and may include special instruments and procedures designed to identify and implement eligibility criteria and simplified, differentiated procedures in line with the particular characteristics of indigenous candidates, information and training programs, and other appropriate measures.</p> <p>The Bank will implement dissemination and training measures to raise awareness of indigenous issues within the institution and in the region, and to improve the degree of knowledge and sensitivity of its staff and local counterparts with regard to indigenous peoples” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 11, 2006)</p>
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		Indigenous Peoples;	
Indigenous Peoples and Development (cont.)	<p>(h) protect indigenous knowledge, including by strengthening intellectual property rights; and</p> <p>(i) facilitate partnerships among the government, IPOs, CSOs, and the private sector to promote Indigenous Peoples' development programs"</p> <p>(World Bank Operational Manual 4.10 – Indigenous Peoples, p.5, 2005)</p>	<p>(viii) preserve and respect indigenous knowledge, including strengthening intellectual property rights; and</p> <p>(ix) facilitate partnerships among the government, Indigenous Peoples' organizations, civil society organizations, and the private sector to promote Indigenous Peoples' development programs"</p> <p>(Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 61, 2009)</p>	
Grievance Mechanism	<p>"OP 4.10, Annex B</p> <p>The IPP includes the following elements, as needed:</p> <p>(h) Accessible procedures appropriate to the project to address grievances by the affected Indigenous Peoples' communities arising from project implementation. When designing the grievance procedures, the borrower takes into account the availability of judicial recourse and customary dispute settlement mechanisms among the Indigenous Peoples" (World Bank Operational Manual 4.10 – Indigenous Peoples, Annex B, 2005)</p>	<p>"The borrower/client will establish a mechanism to receive and facilitate resolution of the affected Indigenous Peoples communities' concerns, complaints, and grievances. The grievance mechanism will be scaled to the impacts of the project. It should address concerns and complaints promptly, using an understandable and transparent process that is culturally appropriate, gender responsive, and accessible to the affected Indigenous Peoples communities at no cost and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The affected Indigenous Peoples communities will be appropriately informed about the mechanism" (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 58, 2009)</p>	

Monitoring and Reporting	<p>“OP 4.10, Annex B</p> <p>The IPP includes the following elements, as needed:</p> <p>(i) Mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the IPP. The monitoring and evaluation mechanisms should include arrangements for the free, prior, and informed consultation with the affected Indigenous Peoples’ communities” (World Bank Operational Manual 4.10 – Indigenous Peoples, Annex B, 2005)</p>	<p>“The borrower/client will monitor and measure the progress of implementation of the IPP. The extent of monitoring activities will be commensurate with the project’s risks and impacts. In addition to recording information to track performance, the borrower/client should use dynamic mechanisms, such as inspections and audits, to verify compliance with requirements and progress toward achieving the desired outcomes. For projects with significant adverse impacts on Indigenous Peoples, the borrower/client will retain qualified and experienced external experts or qualified NGOs to verify monitoring information. The external experts engaged by the borrower/client will advise on compliance issues, and if any significant Indigenous Peoples issues are found, the borrower/client will prepare a corrective action plan or an update to the approved IPP. The borrower/client will implement the corrective actions and follow up on these actions to ensure their effectiveness. The borrower/client will prepare periodic monitoring reports on the progress of IPP implementation, highlighting compliance issues and corrective actions, if any. The borrower/client will submit semiannual monitoring reports. The costs of monitoring requirements will be reflected in project budgets” (Asian Development Bank Safeguard Policy Statement, Safeguard Requirements 3: Indigenous Peoples, p. 58, 2009)</p>	<p>“The guidelines for this policy will set out verifiable indicators of compliance with it and of its effectiveness, including the effectiveness of projects in improving the living conditions of indigenous peoples and in considering their cultural specificity. The Bank’s evaluation instruments will be used, as applicable, to monitor these indicators. The Bank will periodically evaluate the implementation of this policy and the achievement of its objectives through in dependent reviews that will include consultations with national governments, indigenous peoples, the private sector and civil society. The first evaluation will take place no later than five years from the entry into effect of the policy, with the understanding that the Administration or the Board of Executive Directors may initiate partial evaluations prior to this date. The results of the evaluations will be presented to the Board of Executive Directors and disseminated in accordance with the Bank’s Policy on Disclosure of Information (OP-102)” (Inter-American Development Bank Operational Policy on Indigenous Peoples, p. 11, 2006)</p>
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