

THIS STATEMENT IS MADE BY TANZANIA INDIGENOUS PEOPLES CIVIL SOCIETIES ON THEIR SIGNIFICANT CONCERNS ON THE PROPOSED WORLD BANK ENVIRONMENTAL AND SOCIAL FRAMEWORK

We are aware and fully informed that the World Bank is currently engaged in an unprecedented revision of its entire safeguards framework (social and environmental safeguard policies) by bringing all its safeguard policies into one set of standards. The proposed safeguards framework covers a wide range of requirements particularly on: social and environmental impact assessment, transparency and access to information, participation and consultation, engagement with indigenous peoples, resettlement, forests and natural habitats, and cultural heritage.

It is clear that the final form of the proposed Environmental and Social Framework will have significant impacts on the future of development in Tanzania, in Africa and globally, particularly for indigenous peoples. This is due to the fact that the World Bank has been, and continues to be, a standard-setter for development finance globally. Therefore, the World Bank safeguards (previous, existing and proposed) have served and will serve as the foundation for safeguard policies for prominent financial institution in Africa like the African Development Bank (AfDB) and other multilateral and national development institutions including those dealing with climate change finance. In this regard, the Bank should be setting the example for other institutions with respect to safeguards.

We have reviewed and considered the draft of the new proposed World Bank Environmental and Social safeguards (ESS). Principally, we are encouraged by the initiative and the progress made so far as well as all the support currently being offered by the World Bank for Indigenous Peoples worldwide, and towards the Indigenous Peoples of Africa and Tanzania in particular. We also support the dialogue and consultation process as set up by the World Bank and welcome the Bank's acknowledgment that Indigenous Peoples' participation on issues affecting them under the proposed ESS is crucial. We therefore commit to working towards strengthened relations between the World Bank and the African region's and specifically Tanzania Indigenous Peoples.

However, we are deeply concerned with the overall weakening of the policy requirements for indigenous peoples which in turn has very serious implications including; denial of the existence and rights of indigenous peoples under international human rights laws, lack of meaningful and effective participation, forced eviction and lack of access to information.

The limited scope of the projects impacting on indigenous people and financed (directly or through intermediaries) by the World Bank in which ESS7 will apply is something of serious concern. The proposal that the implementation of policy requirements for indigenous peoples could be subject to an 'opt-out', or that borrowers can use their own systems or national laws that are not aligned with the recognition of the rights of indigenous peoples under international human rights instruments are both unwelcomed and unacceptable.

Through the planned consultation on the proposed ESS in Dar es Salaam on 4th November 2014, and subsequently in the Regional IP Consultation in Johannesburg (21st November, 2014) we

the IPOS in Tanzania wish to raise our concerns and our voices on any possibility of the non-application of the indigenous peoples' standard in Tanzania. We strongly stress that the future development of the World Bank Environment and Social Framework must respect human rights and the environment, and not undermine the realization of our rights.

In this regard, we wish to bring the following issues be taken into consideration and effectively responded to:

That the implication of Clause 33, pg. 15 of World Bank Environment and Social Framework introduces the following issues that adversely affect indigenous peoples:

- ✓ That for applicability of ESS7, the Bank will undertake a screening to determine whether Indigenous Peoples are present in, or have collective attachment to, the project area.
- ✓ Option for non-application of ESS7, and applications of an alternative approach, *derogates* (ESS7) on safeguards for indigenous peoples, including the principle of Free Prior Informed Consent (FPIC) for indigenous people. In our opinion this must be changed to amongst others confirm the right to FPIC.
- ✓ That the implication of the above is that it lowers minimum standards provided by UN instruments including the Declaration on the Rights of Indigenous Peoples by making the application of standards for indigenous peoples optional.
- ✓ The screening by the Bank provided therein, to determine whether Indigenous Peoples are present in, or have collective attachment to, the project area is another issue of concern may likely contravene the well established international norms of self identification by indigenous putting it in the hand of the bank.
- ✓ Further, the application of the alternative approach by the Bank seems to be solely a business of the bank and the borrowers, which is likely remove indigenous peoples from the dialogue. It is unacceptable that indigenous peoples can be removed from decision-making about the course of their own development.

In our views, once a subject (of a rule/law) has successfully avoided being subjected to the rule/law, attaining the same result outside the rule/law becomes optional as well. It is therefore unacceptable to leave indigenous peoples' rights to the mercy of the state.

In the proposed World Bank ESS7 a new provision on "Opt-Out" clause allows countries to "opt out" application the indigenous peoples safeguard. The draft proposes: **"that borrowers (mainly, but not exclusively, governments) can request that they not apply Environmental and Social Standard 7 on Indigenous Peoples. Borrowers may request this if they consider that identifying indigenous peoples would, in some way, heighten ethnic tensions or increase conflict, or if recognizing culturally distinct groups is contrary to their national constitutions"** (ESS7 Paragraph 9). Such that the proposed new Indigenous Peoples Standard (ESS 7) would not be applied if requested by a government and approved by the World Bank's Board.

In Tanzania context, while there are admittedly tensions involving livelihood options, in particular pastoralists and farmers resulting from shrinking resources on which both groups depend, they are not necessarily ethnic driven. In our views therefore, Tanzania should not support this position but instead continue to encourage ethnic and religious tolerance. Even in countries in which there are ethnically connected tensions, it is unfair, without any evidence, to

attribute them to indigenous peoples who in most cases constitute the most marginalized and the poorest groups in the country to which they belong.

Despite the fact that the ability to opt-out is not automatic and that it must be requested and approved by the Bank, yet the critical questions remain to be: what will this process look like? How will indigenous peoples be involved? Even if there is a participatory process, the issues raised by having an opt-out clause in the first place is dangerous and makes the adherence to the rights of indigenous peoples rights optional to borrowers. Indigenous peoples rights are human rights and they should not be alienable and the bank is a standard setting institution should not show the way to states to alienate them

The introduction of the opt- out clause directly and seriously undermines the very fundamental rights that indigenous peoples have over their lives, lands territories and resources and the course of their own development, as already enshrined in international human rights law and country specific mother laws (constitution).

Further: many governments in Africa and elsewhere are taking progressive action on indigenous peoples'¹ issues including Tanzania. Therefore, including an opt-out clause risks undermining those actions. Furthermore, The Bank is a “specialized agency” of the UN that is directed by Article 42 of the UN Declaration on the Rights of Indigenous Peoples (UN Declaration) to promote respect for and full application of the provisions of the UN Declaration. Hence, allowing governments to opt out in ESS7 means a failure of the bank to fulfill its commitment. This will be setting a dangerous precedent that human rights are optional. As a result, the proposed new framework also erodes protections for critical habitats, allows expanded offsets and logging, and removes considerations for forest-dependent peoples such as Hunter-Gatherers and pastoralists for Tanzania context.

In our views and suggestion, it would be wise and rational for the Bank to take a holistic view of countries when considering their demands to include the “opt- out” clause/proposal.

Further to that, in the draft ESS, the proposal would allow the Bank and its borrowers to rely on national laws and regulations instead of the safeguards, with no clear indication of when this is appropriate or how a minimum level of protection would be assured. This applies where the Borrower is concerned that, the process of identifying groups for purposes of applying this ESS would create a serious risk of exacerbating ethnic tension or civil strife, or where the identification of culturally distinct groups as envisioned in this ESS is inconsistent with the provisions of the national constitution. Hence, as it is the case of “Opt-out”, again the ESS elect not to apply the requirements for indigenous peoples as established in ESS7 without any recourse available to the affected indigenous peoples themselves.

In terms of Tanzania intention to opt out: this is really a contradiction to its own recent policy and commitment through Tanzania National REDD+ Strategy of 2013, which accept to comply to the World Bank IP policy 4:10. The strategy states that: *"The Strategy aims to address these*

¹ WCIP outcome document available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/69/L.1.

issues by development of a system for providing information on Safeguards that is consistent withIndigenous Peoples (OP/BP 4.10)". Again the strategy states that "The most relevant World Bank policies, in our case, will be ... and Indigenous Peoples (OP/BP 4.10). It further states that "The World Bank policies and procedures mentioned above also apply to activities financed by the FCPF and which Tanzania is a legitimate beneficiary.

The likely implications of this proposal are: further marginalization of indigenous peoples and their livelihood systems since most of the national laws (in the Tanzanian context) have been the source of historic, political and geographical marginalization. It also leads to denial of indigenous peoples' right to participate in any assessment or decision done to set aside the requirements for ESS7 replacement. Further, the proposal for the adoption of borrower systems did not highlight or mention specific requirements in the assessment of national laws relating to the rights and interests of indigenous peoples in particular.

To the best of our knowledge, there is no single provision in the constitution currently in force, which forbids identification of indigenous peoples. In a move that indicates that our country is very progressive in respecting human rights, the proposed new constitution draft contains to wide-ranging of articles on pastoralists and hunter-gatherers - the two livelihood options for indigenous peoples. To the contrary, the current draft of the constitution, which awaits a national referendum, is progressive in terms of recognition of hunter-gatherers (art 56 (3)) and pastoralists (in articles 13, 23 and 46). These two groups are the only indigenous peoples in Tanzania.

It is important that any assessment of national laws proposed to be used in replacement of ESS7 must include, but not limited to, assessment of the extent to which a national legal framework for protection of indigenous peoples aligns with international human rights standards and laws.

Based on the above narratives, we would like to reiterate our concerns as follows:

- i) Identification and recognition of, and **adherence to, the rights of indigenous peoples should not be left to the borrower**; its obligation and that of the bank is to respect their rights
- ii) **Minimum standards must be universal**, such as the UN Declaration on the Rights of Indigenous Peoples. The only acceptable departure from a position of universality should be if the regional standard is made higher and not lower
- iii) The proposed 'Opt out' **contravenes international law** on the rights of indigenous peoples, including the principle of Free Prior and Informed Consent (FPIC)
- iv) The potential use of the borrower opt out is equivalence to not using the safeguards at all and this means non-existence of safeguard. As a result, **the borrower is given too much freedom to derogate hard fought landmark efforts made in the recognition and respect of Indigenous Peoples rights in Tanzania.**

In conclusion, the protection of indigenous peoples is fundamental to the survival and existence of Indigenous communities in Tanzania and elsewhere. It is therefore crucial that the World Bank respects the rights of Indigenous Peoples and ensures that borrowers do the same. Again, it is time for the World Bank to adopt United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as the minimum standard of application in the new World Bank Safeguards Policy.

Made this 5th day of December 2014 and endorsed by the following Indigenous Peoples organizations:

1. Pastoralists Indigenous NGOs Forum- PINGOs Forum
2. Association for Law and Advocacy for Pastoralists- ALAPA
3. Community Research and Development Services –CORDS
4. Ujamaa Community Resource Trust/Team (U-CRT)
5. Parakuyo Indigenous Community Development Organization (PAICODEO)
6. Pastoral Survival Option - NAADUTARO -
7. Tanzania Intellectual Property Network (TIP-NET)
8. Hadzabe survival Council of Tanzania -HSCT
9. MASAWJANDA DEVELOPMENT ORGANIZATION
10. Pastoralist Livelihood and community Education Program -PALICEP
11. TANIPE- Tanzania Network of Indigenous Peoples
12. Laramatak Development Organization
13. Pastoral Women Council
14. Maasai Women Development Organizations
15. Ilaramatak Lorkonerei
16. KINNAPA Development Program- KINNAPA
17. Ngorongoro Youth Development Organizations
18. Ngorongoro NGOs Network- NGONET
19. Huduma ya Injili na Maendeleo ya Wafugaji - HIMWA
20. Kidupo Development Pastoralists Organization - KIDUPO
21. Tanzania Network of Indigenous Peoples - TANIPE
22. DILEGA Trust
23. Pastoralist livelihood initiative of Tanzania - PALITA
24. Oseremi Development Organization - OSEREMI

25. Longido Community Development Organization - LCDO

26. Irkisongo Pastoralists initiatives -IPI

27. Inyuat E Maa Development organizations- INYUAT E MAA