March 10, 2016

Mark King
Chief Officer, Environmental and Social Standards
The World Bank
1818 H Street NW
Washington, D.C. 20433

RE: Follow-up to the Multi-Stakeholder Consultation Meeting held in Washington, D.C.

Dear Mr. King,

The Indian Law Resource Center is appreciative of the opportunity it had to participate in the multi-stakeholder consultation meeting on the World Bank’s Proposed Environmental and Social Framework (ESF) that was held in Washington, D.C. on February 22-24, 2016. As the safeguard policies review process appears to be drawing to a close, the Center would like to highlight some of the central points we raised at this meeting on issues relating to indigenous peoples, involuntary resettlement, and cultural heritage. These points received unanimous support from the attendees, including the Safeguards Team members, officials of the U.S. Government, and representatives of non-governmental organizations.

The criticisms and suggestions on outstanding issues discussed herein are not comprehensive or exhaustive, but rather modest. They are some of the salient or most important outstanding matters that could affect indigenous peoples’ well-being. Our main points and suggestions are summarized below and are discussed further in the body of our previous written comments, which are available at http://indianlaw.org/mdb/world-bank.

Standard 7: Individual ownership of lands. We urged the World Bank to either eliminate Standard 7 language referring to conversion of indigenous peoples’ property rights to land into individual ownership, or set up a prohibition of financial support to projects seeking such a conversion. Considering that indigenous peoples own their lands collectively and hold a special relationship to their lands as distinct peoples within existing nation-states, such a conversion must be explicitly prohibited. Current policy language fails to meet the standard set by the U.N. Declaration on the Rights of Indigenous Peoples (U.N. Declaration) on this matter.

Standards 5 & 7: Land-based redress. We advised the World Bank to explicitly state in these Standards that: (1) land-based redress for indigenous peoples will be a priority; and that (2) when indigenous peoples are subject to involuntary resettlement, they should be guaranteed equal or greater ownership rights over any replacement lands, and that replacement lands should be equal in quality, size and legal status, unless their free, prior and informed consent has been obtained for alternative redress. Current policy language falls below the standard set by the U.N. Declaration.

Standard 7: Indigenous peoples living in voluntary isolation. We asked the World Bank to include an explicit prohibition for financial support to projects that may affect indigenous peoples living in voluntary isolation. Because current policy language is vague and does not set out a clear protection measure, it fails to meet regional applicable standards set by the Proposed American Declaration on the Rights of Indigenous Peoples, the Inter-American Development Bank’s Operational Policy on Indigenous Peoples, and the Inter-American Commission on Human Rights.

Standards 5, 7 & 8: Relocation of indigenous peoples’ sacred sites. We exhorted the World Bank to prohibit the relocation of indigenous peoples’ sacred sites. As sacred sites are by their very nature site-specific, any attempt to ‘relocate’ these sacred spaces will destroy their religious and cultural value in all but the rarest cases. Such relocation would prevent indigenous peoples from manifesting, practicing, and teaching their
spiritual and religious traditions, customs, and ceremonies associated with their sacred
and ceremonial sites. Without a bright line prohibition on relocation of indigenous
peoples’ sacred sites, the current language in the ESF falls short of its goal to protect
indigenous peoples’ sacred sites and falls below the standard set by the U.N.
Declaration.7

Neither Standard 5 nor Standard 7 prevent such relocation. Paragraph 17 of
Standard 5 merely cross-references Standard 7 without discussing indigenous peoples’
sacred sites. Unfortunately, paragraph 24 of Standard 7 applies only to projects that may
“significantly impact cultural heritage that is relevant to the identity and/or cultural,
ceremonial or spiritual aspects of Indigenous Peoples’ lives,” requiring that “priority... be
given to the avoidance of such impact. Where significant project impacts are
unavoidable, the Borrower will obtain the FPIC of affected Indigenous Peoples.” The
determination of “significant impact” is too vague to serve as an effective standard and its
interpretation appears to be left to the borrower’s discretion.

Standard 8 allows relocation of “archeological sites and material” (para. 18),
“built heritage” (para. 22), and “natural features with cultural significance” (para. 25).
The language in paragraph 25 is alarming, as it makes the borrower responsible of
determining “whether it is possible to transfer the cultural heritage and/or sacred
characteristics of a place to another location.”

- **Standard 7 & 8: Due process of law.** We requested that the World Bank explicitly
require in these Standards that due process is applied in all consultation proceedings with
indigenous peoples where their rights and/or interests are subject to determination, as
well as when projects intend to use indigenous peoples’ cultural heritage/resources for
commercial purposes. Standard 8 requires only that borrowers inform “affected parties”,
including indigenous peoples, about their rights, the scope of the commercial
development, and potential benefits (para. 28). It also asks borrowers to carry out a
meaningful consultation, provide for benefit sharing, and identify mitigation measures
(para. 29). Standard 8 should be strengthened and clarified to ensure coherence with the
greater protections found in paragraph 22(f) of Standard 7, which requires borrowers to
afford due process where a project promotes the commercial development of indigenous
peoples’ land or natural resources. In turn, Standard 7 should extend the application of
due process to projects promoting the commercial development of indigenous peoples’
cultural heritage/ resources.

We hope that these observations and recommendations will be helpful in preparing a
revised edition of the ESF, especially of Standards 5, 7 and 8. We recognize the difficulty of the
task of producing a set of policies that will be useful and contain adequate information, without
becoming burdensome and impracticable. Keeping this in mind, we have tried to keep our
suggestions modest and limited in number.

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7 Article 11(1) protects indigenous peoples’ “right to maintain, protect and develop ...manifestations of their cultures, such as
archaeological and historical sites...” Article 12(1) upholds indigenous peoples’ “right to maintain, protect, and have access in
privacy to their religious and cultural sites.” U.N. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, Art. 11(1)
It is of great importance that the World Bank progresses and moves toward vigorous and forthright actions and policies to protect and promote human rights in all of its work and in all of the projects it finances to borrowing countries. For this purpose, we have suggested to hold an in-depth and ongoing discussion on this matter through a working group, which should be comprised of key members of the World Bank’s Board of Directors and Staff and outside experts. There is still much to be done, but we acknowledge and welcome the progress made thus far.

We thank the World Bank for the opportunity to submit further comments as a follow-up to the multi-stakeholder consultation meeting held in Washington, D.C. We look forward to our continued involvement with the World Bank as it proceeds to the final stages of the safeguard policies review process.

Leonardo A. Crippa  
Senior Attorney  
Indian Law Resource Center

cc:

Matthew T. McGuire  
U.S. Executive Director  
The World Bank

Karen R. Diver  
Special Assistant to the President for Native American Affairs, Domestic Policy Council  
The White House

Daniel Peters  
Office of Development Results and Accountability  
U.S. Department of the Treasury

Brian Keane  
Advisor for Indigenous Peoples Issues  
U.S Agency for International Development

Rachel Bayly  
Office of Development Results and Accountability  
U.S. Department of the Treasury

Eric Wilson  
International Affairs Coordinator, Bureau of Indian Affairs  
U.S Department of the Interior