His Excellency Dr. Jim Yong Kim  
President  
The World Bank Group  
Washington DC, USA  
Email: president@worldbank.org or jkim@worldbank.org  

Your Excellency,  

Subject: Revision of the World Bank's Safeguard Policies  

It will be recalled that by a letter of 8 July 2014, which is herewith attached for ease of reference, I, on behalf of the Working Group on Indigenous Populations/Communities in Africa (the Working Group), expressed our concern regarding the proposed revision of the World Bank’s safeguard policies that would allow the application of a different set of standards to indigenous peoples’ in Africa. In the letter, Your Excellency, the Working Group underscored its apprehension to the proposed revision of the existing safeguard standards as it would be a major setback to the positive and encouraging developments recorded across the African continent with regards to the increasing recognition and protection of indigenous peoples'.

Subsequent to our letter, Your Excellency, we received credible reports that the proposed revision of the World Bank’s safeguards standards are not applicable to indigenous peoples’ in Africa only but, to all indigenous peoples' irrespective of their location, and that the proposal is to allow a possible ‘opt-out’ for governments where they could avoid applying the safeguards on indigenous peoples’ rights if they can claim either that it would exacerbate ethnic strife in the
country, or if a national constitution does not recognise indigenous peoples' (paragraph 9 of Environmental and Social Safeguards (ESS7)).

Your Excellency, we are also aware that the ESS7 was approved for public consultation at a Meeting of the Committee on Development Effectiveness (CODE) on 30 July 2014. The Working Group is seriously concerned that the 'alternative approach' proposed in paragraph 9 of the ESS7 will lead to the erosion and ultimate denial of the rights of indigenous peoples' by governments which are wary of the concept and which de facto violate the rights of indigenous peoples'. The Working Group is especially concerned about the situation in Africa, where indigenous peoples' suffer from gross violations of their rights and where many governments are themselves implicated in those human rights violations. The proposed 'alternative approach' will allow such governments to evade their responsibilities toward their indigenous populations as per international law and it would undermine the achievements made by the African Commission on Human and Peoples' Rights (ACHPR) during the past decade for the promotion and protection of the rights of indigenous peoples' on the African continent.

The Working Group expressed these serious concerns in its letter of 8 July 2014, but unfortunately the proposal for an 'alternative' approach is still maintained in the draft of the revised ESS7.

In view of the above, Your Excellency, the Working Group would like to reiterate its recommendations of 8 July 2014 and once again appeal to the World Bank to:

I. set an example by consistently upholding international human rights instruments particularly those of the United Nations (UN) including the UN Declaration on the Rights of Indigenous Peoples;

II. undertake the revision of the safeguards policy with due consideration of the rights of indigenous peoples' in Africa, and to that end, ensure that they are fully in line with international and regional legal frameworks on indigenous peoples;

III. ensure that the revised safeguard policy contributes to and supports the developing legal framework on indigenous peoples' in Africa; and
IV. consult all stakeholders including African indigenous peoples' and the Working Group in the process of revising the safeguards;

And further recommends to the World Bank to:

V. remove the proposal put forward in paragraph 9 of the ESS7, which states that governments can simply 'opt-out' of applying the policy requirements intended to protect indigenous peoples'.

I sincerely hope that my appeal will receive Your Excellency’s favourable attention and prompt response, and I look forward to hearing from you.

Please accept, Your Excellency, the assurances of my highest consideration.

Commissioner Soyata Maiga
Chairperson of the African Commission's Working Group on Indigenous Populations/Communities in Africa

Cc: Members of the Committee On Development Effectiveness

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His Excellency Dr. Jim Yong Kim  
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Your Excellency,  

Subject: Revision of the World Bank’s Safeguard Policies  

I have the honour to address Your Excellency, in my capacity as the Chairperson of the Working Group on Indigenous Populations/Communities in Africa (the Working Group), a special mechanism established within the auspices of the African Commission on Human and Peoples’ Rights (the Commission) with the responsibility to advise the Commission on matters relating to the rights of indigenous populations/communities on the continent.  

The Working Group is to this end mandated, among others, to bring to the attention of the Commission issues that are relevant to an effective enjoyment of all rights by indigenous populations/communities in Africa. It also engages in international forums to advance the rights of indigenous peoples’ in Africa.
Your Excellency, in light of the above, it has recently been brought to my attention that the World Bank is reviewing its safeguard policies, including the one on indigenous peoples. The various reports I have received underline an 'Alternative Approach' to the application of the safeguards for indigenous peoples that would apply only in Africa. According to these reports, the 'alternative approach' entails the application of a different set of standards for indigenous peoples in Africa than for those found in any other regions or parts of the world.

Your Excellency, the proposed 'alternative approach' would be a major setback to the positive and encouraging developments recorded across the continent with regards to the increasing recognition and protection of indigenous peoples. As you may be aware, Your Excellency, for more than a decade the Commission through its Working Group and in collaboration with other international, regional and national actors has made great strides in promoting and protecting indigenous peoples' rights in Africa.

In this regard, Your Excellency, the 2003 landmark conceptualisation Report of the Commission¹ that was formally endorsed by the African Union continues to inspire national, regional and international processes. The Report, which provides clear guidance on who indigenous peoples' are in Africa and what they aspire, has indeed eased social tensions and triggered dialogues in several African states.

Your Excellency, as a result of this and the continuous and concerted effort of the Commission, several African countries have taken various legal, institutional and policy measures that are favourable to indigenous peoples'. For instance, in 2007 when the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted not a single African country voted against it; in 2011 the Republic of Congo adopted a specific law on indigenous peoples; in 2010 the Central African Republic ratified the ILO Convention 169; Burundi introduced a quota for indigenous people in the parliament; Niger Pastoral Code recognised use rights for pastoralist communities; the 2010 Kenyan Constitution makes explicit reference to lands and natural resources-related historical injustices suffered by hunters gatherers and pastoralist communities; the DR Congo legislation on forests uses the term indigenous peoples. Moreover, the Report of the Ugandan Government to the Human Rights Council's Universal Periodic Review (UPR) of 2013 stated "Uganda has indigenous communities who include the Batwa in the West; Benet in the Mt. Elgon region; the Tepeth in Karamoja; and others in other remote locations". Parliamentary debates on indigenous peoples have also

taken place in Cameroon in 2011, in Namibia in 2012, and in DR Congo in 2014. Namibia is also currently considering a white paper on the San peoples.

These are some of the positive developments that the continent is witnessing, which is a clear indication that there is a steadily growing African states' practice in recognising indigenous peoples and developing specific legal framework for their protection.

The apparent resistance to the concept of indigenous peoples is in most cases based on misunderstanding that the concept would threaten national unity, give preferred rights to indigenous peoples and exacerbate ethnic tensions or block national development. The designation of "indigenous peoples", as elaborated by the Commission, has adequately addressed those fears although there is still more to be done to raise awareness.

It will also be recalled that the World Bank has appreciated and used the Commission's conceptualization of indigenous peoples' in its analysis and work in Africa, and actively participated and supported the Commission's position in the regional sensitization seminars organized by the Working Group. The Commission is, therefore, surprised to hear that the World Bank is now developing an 'alternative approach' which may have an adverse impact in the promotion and protection of indigenous peoples' in Africa.

Your Excellency, any 'alternative approach' to indigenous peoples in Africa would undermine the work of the Commission, which has started to bear fruit by gradually inspiring and guiding national laws and, policies. Such an 'alternative approach' would also undermine the Commission's on-going work to sensitize stakeholders about what the concept means in Africa.

Your Excellency, I am afraid that the 'alternative approach' being proposed by the World Bank could also lead to a parallel and conflicting framework that would put a brake on the increasing recognition of indigenous peoples' by African governments. The 'alternative approach' would as well be in stark contradiction with the various policies, decisions and rulings of the Commission and that of the African Union.

In view of the above-highlighted concerns, Your Excellency, I would like to humbly recommend that the World Bank Group:

I. should set example by consistently upholding international human rights instruments particularly those by the UN including the UNDRIP;
II. undertake the revision of the safeguards policy with due consideration of the rights of indigenous peoples in Africa, and to that end ensure that they are fully in line with international and regional legal frameworks on indigenous peoples;

III. ensure that the revised safeguard policy contribute to and support the developing legal framework on indigenous peoples in Africa; and

IV. consult all stakeholders including African indigenous peoples and the Commission in the process of revising the safeguards.

I sincerely hope that my appeal will receive Your Excellency's favourable attention and prompt response.

Let me also inform Your Excellency that in line with my mandate to report to each Ordinary Session of the Commission on the situation of indigenous populations on the continent, the content of this letter as well as that of any response received from Your Excellency will be included in my Report to be submitted to the 56th Ordinary Session of the Commission, which is scheduled to take place from 14 to 30 October 2014 in Niamey, Niger.

Please accept, Your Excellency, the assurances of my highest consideration.

Commissioner Soyata Maiga
Chairperson of the African Commission's Working Group on Indigenous Populations/Communities in Africa

Cc: Members of the Committee On Development Effectiveness

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