


Perceived Challenges to Recognition on Prior and Informed Consent of Indigenous Peoples and other Local Communities: The experiences of the Inter-American Development Bank

Anne Deruyttere

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/sdlp>

 Part of the [Banking and Finance Law Commons](#), [Environmental Law Commons](#), [Human Rights Law Commons](#), [Indian and Aboriginal Law Commons](#), [International Law Commons](#), [Land Use Law Commons](#), [Law and Society Commons](#), [Legal History Commons](#), and the [Natural Resources Law Commons](#)

Recommended Citation

Deruyttere, Anne. "Perceived Challenges to Recognition on Prior and Informed Consent of Indigenous Peoples and other Local Communities: The experiences of the Inter-American Development Bank." *Sustainable Development Law and Policy*, Summer 2004, 40-42.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Sustainable Development Law & Policy* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

PERCEIVED CHALLENGES TO RECOGNITION OF PRIOR AND INFORMED CONSENT OF INDIGENOUS PEOPLES AND OTHER LOCAL COMMUNITIES:

THE EXPERIENCES OF THE INTER-AMERICAN DEVELOPMENT BANK

by Anne Deruyttere*

INTRODUCTION

While the term “Prior Informed Consent” (“PIC”) is relatively new to the Inter-American Development Bank (“IADB”), many of its aspects related to consultation and participation have been recognized and endorsed in the normative framework of the Bank. Of special importance is the recently approved strategy on “[c]itizen participation in the activities of the IADB,” the Involuntary Resettlement Policy adopted in 1998, which requires prior informed consent in the case of indigenous people possibly affected by involuntary resettlement, and the new Operational Policy on Indigenous Peoples, currently under preparation, the Board-approved profile of which includes a reference to prior informed consent.

THE CONTEXT OF INDIGENOUS ISSUES AT THE IADB

In the early eighties, the Bank began to focus on indigenous issues when addressing environmental and social impacts of infrastructure projects in areas of high biodiversity, particularly tropical lowland areas inhabited by indigenous peoples. As a result, the Bank has developed some procedures and guidelines on environmental and social issues, including involuntary resettlement as well as indigenous peoples’ issues. During those early years, because of the close link to fragile ecosystems in tropical areas, there was a focus on tribal indigenous groups, which are a minority in Latin America, comprising only 5 to 10% of all indigenous peoples on the continent (there are 40 to 50 million indigenous people in Latin America, about 10% of the entire population).

In 1994, the IADB began to take a much more proactive focus in developing projects where the focus would be on benefiting indigenous peoples rather than mitigating impacts. The Bank now proactively seeks out opportunities to benefit indigenous peoples across a wide range of operations, including projects to improve health, education, and access to productive opportunities. This shifting approach also implied a new concern for the needs and rights of peasant indigenous communities, the majority of which are in the Andes and in Meso-America. In addition, indigenous issues are no longer addressed mainly through small grants but rather as an issue to be mainstreamed in the entire portfolio of bank projects and in policy dialogue with its borrowing countries.

Drawing on the lessons learned from earlier stages, now, in 2004, the IADB is preparing an Indigenous Development

Strategy and an Operational Policy on Indigenous Peoples, to systematically promote: (1) “development with identity” of indigenous peoples in a way that recognizes the fundamental connection between culture and sustainable development; and (2) the safeguarding of indigenous rights in all its operations. This safeguarding aspect of the policy is becoming increasingly important again, since the IADB portfolio will likely include more infrastructure projects that require a strong normative framework for protection and mitigation.

PIC CONSULTATION AND PARTICIPATION AT THE IADB

While the terminology of PIC is relatively new at the IADB, for a long time the IADB has applied consultation, participation, and information dissemination as important require-

Indigenous peoples are increasingly interested in using their assets for improving their social and economic conditions.

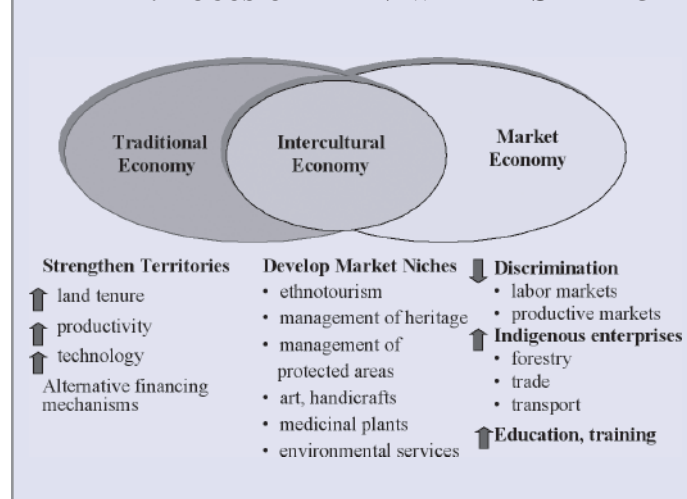
ments in its projects, as reflected in a new Strategy on Citizen Participation in the Activities of the IADB (*See* http://www.iadb.org/sds/SCS/publication_1470_1885_e.htm). Since 1990, the IADB has followed Environment and Social Impact Guidelines, which include the condition that tribal indigenous groups have to be in agreement for projects affecting their territories. In 1998, the principle of PIC was included for indigenous peoples as part of the involuntary resettlement policy. Now, the recently approved Profile for the Operational Policy on Indigenous Peoples includes PIC as one of the principles to be addressed in the policy document currently under preparation.

*Anne Deruyttere is Chief of the Indigenous Peoples and Community Development Unit (of the Sustainable Development Unit) at the Inter-American Development Bank.

It is important to consider a continuum of levels of participation in projects. A tentative ordering of the continuum spans the following concepts from least to greatest participation: information-sharing, meaningful consultation, prior and informed consent, participation in decision-making, co-management, and self-management. The level of participation depends on the type of project and its purpose. It also depends on whether the project is approaching indigenous communities from a mitigation perspective, i.e. compensating for negative impacts, or from a proactive perspective. But the idea is that these concepts, when applied in practice, lead to the empowerment of indigenous peoples in the specific context in which they are operating. Following the approval of the citizen participation strategy, the IADB is developing a typology to determine the participation requirements for a project. Among the factors considered are: complexity of the project; the number of people impacted; the impact and sustainability risks of the project itself; and the type of population, whether it's a very vulnerable indigenous population or a population more able to defend its rights.

and (4) focusing on the intercultural economy as a vehicle of social and economic development, as well as a means of strengthening identity and culture.

TABLE 1: FOCUS OF THE NEW IADB STRATEGY



PRECONDITIONS FOR PARTICIPATION AND INFORMED CONSENT

It is important to have sound socio-cultural diagnostic assessments when engaging in a project that involves indigenous peoples in order to facilitate the participation process. It is important to understand the way indigenous peoples use their territories and what concepts they apply to their territories. How do they organize themselves in relation to those territories and its resources? How can these concepts be articulated into sustainable land use planning and participatory community development processes?

A new type of project supporting integrated territorially-based community development is becoming increasingly important in the Bank's portfolio of projects. These projects start with indigenous communities' own plans for the future. In this context, consultation and participatory planning leads to the empowerment of communities, which must take a leadership role in their own development processes in order to be sustainable over the long term.

In order to support these territorially based projects, and others that are focused on increasing community participation in project design and execution, the IADB as an intergovernmental agency faces special challenges related to the promotion of decentralized execution mechanisms, necessary to promote greater involvement of local communities. This requires often highly-centralized governments to implement mechanisms that encourage local community development on the ground, while at the same time ensuring inter-agency coordination and efficient resource allocation.

The Indigenous Development Strategy is drawing on the lessons learned from earlier projects. This includes the need to adopt more flexible funding mechanisms as opposed to the tra-

The new Bank strategy includes a focus on how indigenous peoples are inserted into market economies by viewing the intercultural economy as a vehicle of social and economic development.

THE EVOLVING CONCEPT OF INDIGENOUS DEVELOPMENT

Over the years, the IADB has learned by working with indigenous peoples that sustainable development is development with identity. Culture and identity cannot be separated from sustainable economic and social development. Both are part of the same coin, and both reinforce each other. Indigenous peoples are increasingly interested in using their assets of natural resources, cultural heritage, and social capital as vehicles for improving their social and economic conditions. As a result, the new Bank strategy will focus on: (1) creating opportunities based on assets in addition to the conventional focus on poverty reduction, (2) developing a strategy to strengthen traditional territories, (3) looking at the way in which indigenous peoples are inserted into market economies,

ditional project-based approach, which typically requires execution within a short four or five year period and no guarantees for continuity. Also, institutional strengthening, capacity building, and conflict resolution are now being included as key concepts in projects, especially in local community development projects with indigenous peoples. In some cases, the IADB has even taken on the role of facilitator in what is often a very difficult dialogue between the government and indigenous peoples.

GOOD PRACTICE AT THE BANK

Over the years, the IADB has developed a number of projects incorporating good practices such as participatory planning, socio-cultural issues, decentralized execution mechanisms, the linkages between the strengthening of environmentally- and territorially-based aspects to local participation in management and decision-making. Examples of these approaches include the PAPIN ethnoengineering project in Honduras, the Darién Sustainable Development Project in Panamá and the Origenes indigenous community development program in Chile. (For more information about specific projects, please visit http://www.iadb.org/sds/IND/index_ind_e.htm.)

During initial project design, these projects employed a relatively simple but effective methodology helping communities to define their problems and aspirations, assess their alternatives, and then identify and prioritize the community infrastructure they want built, as in the case of the ethnoengineering project in Honduras. Afterwards, the design process involves communities in deciding the site and location of the project, direction of the infrastructure, and respecting local customs in terms of its location and structural elements. In addition to this, the methodology implies taking into account the community dynamics and potential conflicts, the function of the infrastruc-

ture, the environmental adequacy, use of local materials and local workforce, and the cultural aesthetic.

During the execution and operation phase, implementation agreements are signed that include consent of local communities, and also consider market forces, the availability of specialists in the area, the advantage of economies of scale, and the combination of efforts in different communities. There is also a sustainability plan for local materials, because in many communities, local resources disappear fast as a result of environmental pressures, so there is a concern to maintain a supply of local materials while working with the government to implement the project. Most importantly, execution and operation requires local participation and a concerted effort to get everyone to agree.

The maintenance agreement was established between several different segments of the indigenous community. Often, indigenous communities are not homogenous, and different sectors may benefit more or less from the infrastructure that is built. One of the problems with maintenance is that these different segments are not equally interested in ensuring long term maintenance. The methodology therefore calls for baseline studies of social organization and traditional economy, the concepts of cultural land use, the availability of natural resources and local materials, and the “world view” of indigenous peoples related to infrastructure.

By drawing on local values and aspirations, achieving consensus among the different stakeholders, empowering communities to direct their own processes and ensuring local ownership, the long term maintenance and sustainability of the development effort is ensured.

