



House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing on
The Rights of Indigenous Peoples in the Americas

November 20, 2020 10:00 a.m.
Virtual via Cisco WebEx

Statement of
Jolie Schwarz
Policy Director, Bank Information Center

Co-Chair McGovern, Congresswoman Haaland, Co-Chair Smith, and members of the Commission,

Good morning and thank you for the opportunity to testify today, and to present the Bank Information Center's reflections on over 30 years of supporting and accompanying Indigenous communities and activists in their advocacy toward the International Financial Institutions (IFIs). We appreciate the continued leadership of this Commission in driving reform at the IFIs to ensure their policies and programs protect and respect human rights.

My name is Jolie Schwarz, and I am the Policy Director at the Bank Information Center (BIC). BIC is an independent, nongovernmental organization whose mission is to advance social, ecological, and economic justice by amplifying community voices and democratizing international development finance. BIC partners with civil society and communities in developing and transition countries to monitor and influence the policies and operations of the World Bank Group and other IFIs. In partnership with international, regional, and local civil society, BIC conducts research and advocacy aimed at reforming and improving IFI policy and practices. We appreciate the continued leadership of this Commission in driving reform at the World Bank and other IFIs to ensure their policies and programs protect and respect human rights.

Introduction

Despite significant developments in international law over the last thirty years that have affirmed and recognized the rights of Indigenous Peoples,¹ IFIs continue to finance projects and programs that lead to significant, negative impacts on Indigenous communities in Latin America and around the world. As one of the largest shareholders in the IFIs, and *the* largest shareholder at the World Bank Group² and Inter-American Development Bank (IDB),³ the United States government wields significant influence in the institutions and has long called for strong environmental and social standards at the IFIs, including specific protections for Indigenous Peoples. In response to pressure from the U.S. government, civil society, and Indigenous communities, the institutions have adopted policies and practices meant to avoid and mitigate risks of their projects on Indigenous Peoples, but they often fall short of what is required under international law and have failed to protect the rights of many communities. The U.S. government must urgently renew its efforts to strengthen protections for the rights of Indigenous communities at the IFIs and continue to provide strong oversight of projects and programs to ensure policies related to Indigenous Peoples are implemented in full.

A History of Projects with Significant Impacts on Indigenous Peoples in Latin America

Over the last thirty years, the World Bank Group and IDB have financed dozens of projects in Latin America that have had serious implications for Indigenous communities. One of the most egregious examples of a project—funded by both institutions—that led to gross violations of Indigenous rights was the Chixoy Dam in Guatemala. In that case, hundreds of people from the Rio Negro community were brutally massacred in 1982 by the Guatemalan military for their opposition to the dam.⁴ After decades of protest, advocacy from communities and civil society, a reparations agreement for the Chixoy Dam communities was negotiated by the Organization of

¹ See, e.g. “Convention (No. 169) concerning indigenous and tribal peoples in independent countries,” adopted 1989, Treaty Series: Treaties and International Agreements Registered of Filed and Recorded with the Secretariat of the United Nations, 1650 (2000), <https://treaties.un.org/doc/Publication/UNTS/Volume%201650/v1650.pdf>; “United Nations Declaration on the Rights of Indigenous Peoples,” adopted 2007, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf; American Declaration on the Rights of Indigenous Peoples, adopted 2016, AG/RES. 288 (XLVI-O/16), <https://www.oas.org/en/sare/documents/DecAmIND.pdf>; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, “Escazú Agreement,” adopted 2018, https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf.

² World Bank Group Finances, Top 8 Countries Voting Power, accessed November 30, 2020 <https://finances.worldbank.org/Shareholder-Equity/Top-8-countries-voting-power/udm3-vzz9>.

³ Inter-American Development Bank Capital Stock and Voting Power, accessed November 30, 2020, <https://www.iadb.org/en/about-us/capital-stock-and-voting-power>.

⁴ Monti Aguirre, “The Chixoy Dam Destroyed Our Lives,” Carnegie Council for Ethics in International Affairs, 2004, https://www.carnegiecouncil.org/publications/archive/dialogue/2_11/section_3/4456. See also, Nick Dearden, “Guatemala’s Chixoy dam: where development and terror intersect,” December 10, 2012, <https://www.theguardian.com/global-development/poverty-matters/2012/dec/10/guatemala-chixoy-dam-development-terror>.

American States that involved the World Bank and IDB, but the agreement has never been fully implemented. While policies and practices of the institutions have evolved since Chixoy, there have been dozens of other instances over the years in which projects financed by the World Bank and IDB have overlooked, ignored, or contributed to violations of Indigenous rights.

In the 1990s, the World Bank Group invested in the Yanacocha mine in Peru through its private sector arm, the International Finance Corporation (IFC), which led to devastating impacts on Indigenous communities and loss of social license to operate. Created with the support of the IFC, Yanacocha is the largest gold mine in Latin America, and is responsible for nearly half of the annual gold production from Peru.⁵ The environmental and social damage caused by the mine to the local communities was significant, and compounded by the fact that the IFC did not recognize them as Indigenous. Though they met the criteria under IFC policy and self-identify as Indigenous Peoples, they were not afforded the additional protections that the Indigenous people's policy in existence at the time would have provided.⁶ Opposition to the mine culminated in years of intense social conflict around proposed expansions of the mine, including violent protesting of the proposed Conga mine expansion in 2012 that led to the deaths of several members of their community—including one child—in violent clashes with security forces. Community protests of the expansion were successful in obtaining an indefinite suspension of operations around Conga, and the IFC finally divested in 2017.⁷

More recently, in 2013, the private sector arm of the Inter-American Development Bank (IDB Invest) invested in two hydroelectric plants in the Yichk'isis Microregion (Ixquisis) in northwest Guatemala. The construction of the projects caused several social and environmental impacts on the Indigenous Peoples affected including destruction of Indigenous Mayan sacred and ceremonial sites, murders and criminalization of Indigenous authorities, as well as pollution of water sources.⁸ In addition, the projects were approved without the free, prior and informed consent (FPIC) of the communities, and have serious impacts on Indigenous women in particular that were not assessed prior to approval.⁹ The communities have filed a case with the IDB's independent accountability mechanism, the MICI (Mecanismo Independiente de Consulta e

⁵ Javier Mujica, "Yanacocha Gold Mine, Applying Lessons Learned to Avoid Negative Impacts on Children in Future Bank Financed Mining Projects," Bank Information Center, 2016, https://bankinformationcenter.cdn.prismic.io/bankinformationcenter/a1b77b40-4d40-4680-9881-9b043c0c4dc6_Yanacocha+Conga+Case+Study.pdf.

⁶ Shanna Langdon, "Peru's Yanacocha Gold Mine: the IFC's Midas touch?", Project Underground, September 2000, <https://www.ciel.org/Publications/IFCCSPeru.pdf>.

⁷ Cecilia Jamasmie, "Community opposition forces Newmont to abandon Conga project in Peru," Mining.com, April 18, 2016, <https://www.mining.com/community-opposition-forces-newmont-abandon-conga-project-peru/>; Ellen Moore, "For 2 global miners, 'profitable production' has meant devastation," Earthworks, June 27, 2018, <https://www.earthworks.org/blog/newmont-sumitomo-yanacocha/>.

⁸ Report on file with author.

⁹ Report on file with author.

Investigación), and are currently awaiting its final report to assess whether IDB Invest violated its own policies related to Indigenous Peoples and gender.¹⁰

In 2016, weeks after Colombia signed a peace agreement to end the internal conflict with the Revolutionary Armed Forces of Colombia (FARC), the World Bank approved an \$800 million development policy loan to support the country's commitments to address longstanding issues around territorial planning. However, the DPL did not establish mechanisms or provide information to ensure Indigenous Peoples could participate in the new institutional arrangements supported by it, nor did it prevent expropriation of community territory. Because of the lack of requirements around consultation, it was unclear how Indigenous communities were even consulted on the program. As of 2018, there was also no evidence that Indigenous communities had benefited from the project, as most requests for collective land titling had stagnated and there were no clear institutional mechanisms for communities to raise complaints.¹¹

The World Bank Group and IDB remain invested in many different types of projects across the region that have ongoing impacts in Indigenous communities—threatening their rights and livelihoods. An IFC investment in a transmission line in Panama, for instance, poses serious risks to Indigenous Peoples and their environment. Despite urging from the community, consultations around the project have not been sufficient, and their free, prior and informed consent has not been obtained, yet the government of Panama has moved forward with the bidding process for the project.¹² Similarly, a Carbon Fund program in Nicaragua has been proposed for approval this year that has manipulated the consultation process with Indigenous communities by engaging with parallel and illegitimate territorial governing bodies aligned with the government, rather than the legitimate Indigenous and Afro-descendent governing bodies.¹³

Since at least 2008, the World Bank itself has recognized that Indigenous Peoples manage around 80% of the planet's biodiversity, and hold ancestral knowledge that is critical for addressing climate change.¹⁴ Yet, while the World Bank and other IFIs have adopted strong rhetoric around the urgent need to address climate change, many of their projects continue to both impact the rights of Indigenous Peoples as well as exacerbate the climate crisis.

¹⁰ Anastasia Moloney, "Inter-American Development Bank should withdraw Guatemala dam funding: rights groups," Reuters, August 7, 2018, <https://www.reuters.com/article/us-guatemala-dam-rights/inter-american-development-bank-should-withdraw-guatemala-dam-funding-rights-groups-idUSKBN1KSONI>.

¹¹ Bank Information Center, "The World Bank and Colombia's Territorial DPF: Whose Land is it anyway?" April 2018, https://bankinformationcenter.cdn.prismic.io/bankinformationcenter/3b8252f5-7911-442e-8107-df63d3d4f138_Colombia+BIC+DPL+Report_Jun11-2018_WEB+%281%29.pdf

¹² "Panama Transmission Line IV Threatens Indigenous Land Rights," Center for International Environmental Law, July 2018, <https://www.ciel.org/project-update/panama-transmission-line-iv/>.

¹³ Letter of complaint on file with author.

¹⁴ World Bank, The Role of Indigenous Peoples in Biodiversity Conservation, 2008, <https://sacredland.org/wp-content/uploads/2019/11/World-Bank-Indigenous-Peoples-in-Biodiversity-Conservation.pdf>.

Policies and Practices Evolve, but Gaps Remain

Some of the cases discussed here, among many others, have led to improvements in the policies of the MDBs, including the IDB's recently approved environmental and social policies that improve upon its requirements for projects that impact Indigenous Peoples. Nevertheless, the policies are still imperfect or not applicable in some cases, and they are often not implemented well. Furthermore, there is a tendency on the part of the institutions to be forward-looking, applying lessons learned to future projects, rather than to remedy the mistakes of the past. In order to begin to fill the gaps in policy and practice, as well as to provide a path to remedy for communities that have been harmed, the World Bank Group and IDB should adopt the following reforms with respect to Indigenous Peoples:

1. *Policies meant to protect the rights of Indigenous Peoples must be rigorously implemented throughout the project cycle.*

The involvement of the World Bank Group and the IDB lend legitimacy to projects, in part because of the strong standards and technical expertise that they bring to the table. However, policies meant to protect the rights of Indigenous Peoples are not always implemented well. The timing, sequencing, and frequency of the implementation of requirements is critical when financing projects that impact Indigenous Peoples. Many issues, including the proper identification of Indigenous Peoples, must be done early in the project cycle when adjustments are more easily made. Contextual risks around the project should also be incorporated into social and environmental risk assessments, as well as cumulative risks of multiple projects planned for a particular area—prior to project approval, after which the institutions lose significant leverage to effect changes. Implementing policy requirements to obtain the free, prior, and informed consent of Indigenous communities, must also be done early and often, throughout the project cycle, and the institutions must make clear that it is up to communities to give *or withhold* consent.¹⁵ The World Bank and IDB must also exercise heightened vigilance to ensure requirements to obtain FPIC are not ignored or manipulated by the borrower to coerce or feign consent from Indigenous communities.

2. *Protections for Indigenous Peoples must extend to all lending instruments.*

Policies protecting Indigenous Peoples do not apply in the same way to all lending instruments used by the institutions, even though the impacts of the projects on communities may be the same. For technical assistance projects, policy-based lending, projects financed through financial intermediaries and other types of lending instruments, it can be very confusing for communities to understand whether and how the policies apply, and to understand their rights to bring complaints to the institutions under those policies. The World Bank is currently undertaking a

¹⁵ Shona Hawkes, "Consent is Everybody's Business," Oxfam, 2019, <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620854/bp-consent-is-everybodys-business-200819-en.pdf;jsessionid=768575405C516677C64372FAB6A94663?sequence=3>

“retrospective” of its Development Policy Lending instrument, which currently contains no explicit protections for Indigenous Peoples.¹⁶ This instrument will be heavily relied upon in the response to the COVID-19 pandemic and economic crisis around the world, and must be much more sensitive to the risks posed to Indigenous Peoples, as well as the environments on which they depend. The Board is likely to take up the retrospective in early 2021 when the use of DPF will also likely be ramping up, and it should take this opportunity to strengthen protections for Indigenous Peoples in the policy underpinning this important instrument.

3. MDBs must develop clear guidance and procedures for how to address reprisals

In addition to fully implementing environmental and social policies that protect the rights of Indigenous Peoples, the institutions must develop better guidance and procedures to implement commitments to address reprisals that occur as a result of communities voicing opposition or raising concerns about their projects. When retaliation by MDB clients occurs, and the institutions are silent, people can be put at even greater risk. The World Bank and IDB should make clear to all of its clients—prior to project preparation—that they do not tolerate reprisals, and provide detailed guidance for how reprisals should be prevented and addressed by their clients, as well as the steps the institutions will take in response to allegations of reprisals associated with their projects.

4. The IFC should establish a framework for remedial action

Most importantly, the institutions must adopt frameworks for remedial action when projects result in noncompliance with their own policies and harm communities. Both the World Bank Group and IDB have strong independent accountability mechanisms, with technical expertise in compliance and dispute resolution, that can facilitate dialogue between communities and clients as well as hold the institution accountable when it fails to comply with its own policies. But remedy for communities remains elusive. The IFC’s Board recently commissioned a groundbreaking report to kick off the reform of the IFC’s environmental and social accountability system, which was instigated after years of the institution failing to respond meaningfully to the findings of its independent accountability mechanism, the CAO.¹⁷ The External Review discussed the importance of establishing a framework for remedial action at the IFC in detail. And while it acknowledged the important role that institutional learning should play in the accountability process, it also noted that, “there is a common understanding that the role of IAMs is to help assure (through action by the IFI and the borrower) that non-compliance and related harm are remedied.”¹⁸ A remedial framework should be established at the IFC, and there should be opportunities for communities who are harmed by legacy projects financed by

¹⁶ World Bank, Bank Policy Development Policy Financing, Effective 2017, <https://ppfdocuments.azureedge.net/b98d432b-7471-441b-9f39-36b7c380bd05.pdf>.

¹⁷ External Review of IFC/MIGA E&S Accountability, including CAO’s Role and Effectiveness Report and Recommendations, June 2020, <http://pubdocs.worldbank.org/en/578881597160949764/External-Review-of-IFC-MIGA-ES-Accountability-disclosure.pdf> [hereinafter External Review].

¹⁸ External Review at para. 308.

the World Bank Group like Chixoy and Yanacocha—that spurred the development of these standards and frameworks—to benefit from it.

Conclusion

The IFC External Review note that, “Experiences in other IFIs and IAMs have shown that compliance review processes can lead to effective remedial actions only with an engaged and knowledgeable Board (or Board Committee) willing to take strong positions.”¹⁹ In fact, this is true for any reform process at the World Bank and IDB, and highlights the importance of strong shareholders that are willing to provide the necessary oversight of these complex institutions and to continuously push them to improve. The U.S. government, with support and urging from Congress, has historically been the most vocal supporter and champion of strong environmental and social standards at the institutions, and it is responsible for creating much of the architecture around those standards, as well as the mechanisms that should be enforcing them. In order to ensure the systems protect the rights of Indigenous Peoples, the U.S. must now show strong leadership in urging these key reforms to be made at both the World Bank Group and the IDB.

Thank you for the opportunity to testify today.

¹⁹ External Review at para. 319.