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African Development Bank Group's **Development and Indigenous Peoples in Africa**



AFRICAN DEVELOPMENT BANK GROUP

Quality Assurance and Results Department
of the African Development Bank
Compliance and Safeguards Division



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This Issues Paper on Development and Indigenous Peoples in Africa has been prepared by the Compliance and Safeguards Division of the African Development Bank to give an overview of the state of Indigenous People in Africa, highlighting the options for their inclusion by the Bank in development projects the Bank undertakes in its Regional Member Countries (RMCs).

The study was conducted with financial support from the South - South Cooperation Trust Fund. Annah M. Rutebuka, a Principal Social Safeguard Officer at the Bank, guided the review process and ensured a successful completion of this report with exemplary guidance, valuable feedback and constant encouragement from Dr. Anthony O. Nyong, Manager of Compliance and Safeguards Division in the Quality Assurance and Results Department.

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This report relied heavily on publications and other materials from respected scholars and organizations such as African Union, International Work Group for Indigenous Affairs (IWGIA), World Bank, Inter-American Development Bank, European Bank for Reconstruction and Development, Asian Development Bank, International Finance Corporation European Investment Bank, United Nations Economic and Social Council (ECOSOC), the Permanent Forum on Indigenous Issues, the United Nations Development Programme, the European Union and many others. All these esteemed individuals and institutions deserve our greatest gratitude.

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African Development Bank Group
Development and Indigenous Peoples in Africa

Note: In this report, "\$" refers to US dollars. 1 UA = \$1.53

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Acronyms and Abbreviations

ACHPR	African Commission on Human and Peoples' Rights	IP	Indigenous People
ADB	Asian Development Bank	IPACC	Indigenous People of Africa Coordinating Committee
AfDB	African Development Bank	IPDP	Indigenous People's Development Plan
AU	African Union	ISS	Integrated Safeguard System
BP	Bank Procedures	IWGIA	International Work Group for Indigenous Affairs
CDC	Centre for Development Consulting	MDB	Multilateral Development Bank
CERD	UN Committee on the Elimination of Racial Discrimination	MFIs	Micro Finance Institutions
CSO	Civil society organisation	MFI-WGES	Multilateral Financial Institutions Working Group on Environment
DANIDA	Danish International Development Agency	NORAD	Norwegian Agency for Development Cooperation
DFID	Department for International Development-United Kingdom	OMS	Operational Manual Statement
DRC	Democratic Republic of Congo	ORQR	Quality Assurance and Results Department
EBRD	European Bank for Reconstruction and Development	PAPs	Project-affected people
ESIA	Environmental Social Impact Assessment	RAP	Resettlement Action Plan
ESMP	Environmental and social Management Plan	RMC	Regional member country
FPIC	Free prior and informed consent'	UNDP	United Nations Development Programme
GEF	Global Environment Facility	UNDRIP	UN Declaration on the Rights of Indigenous Peoples
IDB	Inter-American Development Bank	UNECA	United Nations Economic Commission for Africa
IFAD	International Fund for Agricultural Development	UNEP	United Nations Environment Programme
IFAD	International Fund for Agricultural Development,	UNPFII:	UN Permanent Forum on Indigenous Issues
IFC	International Finance Corporation	WGIP	Working Group on Indigenous Populations
ILO	International Labor Organization		

DEFINITIONS OF TERMS

African Charter on Human and Peoples' Rights	Also known as the Banjul Charter; an international instrument that is intended to promote and protect human rights and basic freedoms in Africa.
African Commission on Human and Peoples' Rights	A quasi-judicial body tasked with promoting and protecting human rights and collective (peoples') rights throughout the African continent as well as interpreting the African Charter on Human and Peoples' Rights and considering individual complaints of violations of the Charter.
Asian Development Bank (ADB)	A regional development bank based in Manila, the Philippines that facilitates the economic development of countries in Asia.
Bilateral organization	A government agency or nonprofit organization based in one country that provides goods and services for people in other countries.
Category I projec	Projects likely to induce important adverse and irreversible environmental and/or social impacts, such as the displacement of more than 200 people ¹ .
European Bank for Reconstruction and Development (EBRD)	A multilateral development bank based in London that uses investment to help build market economies.
European Investment Bank (EIB)	A European Union bank that provides finance and expertise for sound and sustainable investment projects that further European Union policy objectives.
Expropriation legislation	A law that allows a government to take privately owned property and use it for the benefit of the public.
Indigenous People	Indigenous Peoples are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them ² .
Integrated Safeguards System (ISS)	AfDB's policies that are designed to promote environmental sustainability and to prevent and mitigate undue environmental and social harm by integrating environmental and social management plans into its programmes and projects.
Inter-American Development Bank (IDB)	A cooperative development bank founded in 1959 to accelerate the economic and social development of its Latin American and Caribbean member countries.

¹ For category 1 projects, a full Environmental and Social Impact Assessment and an ESMP are required, and a RAP may apply. Other categories include 2 for projects likely to induce detrimental, site-specific environmental and/or social impacts, category 3 for projects that will not induce adverse impacts and category 4 for projects handled by financial intermediaries.

² United Nations-system as a body has never adopted a definition of the concept of "Indigenous Peoples". The prevailing view today is that no formal universal definition of the term is necessary, given that a single definition will inevitably be either over- or under-inclusive, making sense in some societies but not in others. For practical purposes, the commonly accepted understanding of the term is that provided in the Jose R. Martinez Cobo's (former special rapporteur of the Sub-commission on Prevention of Discrimination and Protection of Minorities) study on the Problem of Discrimination against Indigenous Populations.

International Financial Corporation (IFC)	An organization, part of the World Bank Group that invests directly in private companies and makes or guarantees loans to private investors.
International legislation	The law found in treaties and international agreements among nations, binding the parties thereto, but not necessarily a part of the body of international law binding all nations.
Involuntary resettlement policy	A policy that applies when, because of a development project, people living in the project area are relocated, lose their shelter or assets, or have their livelihoods affected.
Multilateral development bank (MDB)	A financial institution, formed by both donor and borrowing nations, that provides financing for and advice on national development.
Multilateral organizations	Organizations of three or more nations formed to work on issues that relate to all of the countries in the organization.
Operational safeguards/ safeguard policies	Policies that aim to promote sustainability of project outcomes by protecting the environment and people from the potential adverse impacts of projects and helping borrowers/clients to develop the capacity to manage environmental and social risks.
Post-colonial state	The new nation-states that emerged from the process of decolonization in the 1960s and 1970s.
Self-identification	The attribution of certain characteristics or qualities to oneself.



FOREWORD



The African Development Bank's Integrated Safeguard System (ISS) has carefully consulted with "African stakeholders by large to design and incorporate adequate provisions for Indigenous Peoples for three inter-related reasons:

1. Indigenous Peoples are a vulnerable group that warrants special attention. Indigenous Peoples are typically more vulnerable to economic and social marginalisation, exploitation or exclusion. For these reasons, special attention in terms of consultations, appropriate and differentiated support shall be provided to help Indigenous Peoples cope with their resettlement and to improve their livelihood status, in line with national laws..
2. Providing opportunities for Indigenous Peoples is integral to the Bank's strategy of inclusive growth. Inclusive growth is growth that is shared by everyone, especially the most vulnerable. For this reason, the Bank aims to understand the particular needs of indigenous people, in order to be able to promote and defend their welfare, and ensure that the benefits of growth are shared with them equally.
3. Consistency with the approach adopted by other MDBs and Financial Institutions. Although the Multilateral Finance Institutions have adopted a Common Framework on Environmental Assessments, there is a variation in the way that these Institutions address the issues of indigenous peoples. The AfDB, UNDP, EIB and EBRD have mainstreamed Indigenous Peoples into their Safeguards System, while the World Bank, the Asian Development Bank and Inter-American Development Bank have standalone safeguards policies.

The report from which this publication is derived has been commissioned to lay down the foundation in Africa for dialogue and consultation when designing the Bank's policy provisions regarding Indigenous People in Africa. The ISS primarily treats Indigenous Peoples as a special case of vulnerable groups. It recognises and mainstreams requirements related to indigenous peoples across the ISS. It specifically requires, for example, that the effects of the Bank's operations on indigenous peoples be determined and that the interest of these groups, including their opportunity to benefit from the Bank's operations, be protected.

Specific provisions to protect the rights of Indigenous Peoples include: broad community support, consideration of community impacts, adoption of free, prior and informed consultation, establishment of genuine grievance and redress mechanisms at the project level, protection of indigenous peoples and other local communities from infringements that erode their rights over their property, addressing socio-cultural issues, protection of the rights of local communities in using their natural resources, including land in a sustainable manner, use of indigenous knowledge.

In the course of consultations of the ISS—regional workshops and at CODE meetings—the inclusion of provisions to Indigenous Peoples has been divisive. Strong positions have been expressed on both sides of the argument. The case has been made for both strengthening and removing provisions for Indigenous Peoples in the ISS. The different opinions and positions can be summarised as follows.

1. Discomfort with the notion and definition of Indigenous Peoples in the African context—The discomfort stems from a range of factors including i) lack of a regionally agreed definition and confusion around the notion of who Indigenous Peoples are; ii) A sense that the definition is imported from other continents and has a different significance in the Africa context; iii) Concerns that the definition is fraught and politically divisive in Africa; iv) Inasmuch as Indigenous Peoples can be defined, they should be defined at country level.
2. Develop a stand-alone operational safeguard on Indigenous Peoples - Given the importance and complexity of this issue, a number of EDs and CSOs including Indigenous Peoples of Africa Coordinating Committee (IPACC) recommend that the requirements and protections for Indigenous Peoples be specified more clearly in a stand-alone operational safeguard.

3. Strengthen existing provisions to protect the rights of Indigenous Persons. This is done through the Integrated Safeguards System and in all the Operational Safeguards (OS) in the ISS, in line with the relevant provisions of the UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169 and the policies of other MFIs that operate in Africa, especially the Global Environment Facility and the World Bank. The consistency with the GEF will particularly ensure that the Bank remains an Implementing Agency of the Fund.

In addition to the ISS provisions, the Bank suggests more international support for the elaboration of a development approach and a platform to addressing Issues of Indigenous Peoples. A key recommendation from the Indigenous Peoples' Forum is that the Bank should deliberately design and promote development programs that target indigenous peoples, beyond safeguards. This could be in the form of a separate policy on development targeting Indigenous Peoples or through an Indigenous Community Development Plan that should be prepared for projects that have clear risks for Indigenous Peoples. The Bank can also consider establishing a Social Investment Programme as a vehicle to target the rural poor and marginalized communities, or more especially indigenous peoples as recognised by the respective states.

Lastly, the Bank believes that specifically targeting the socio-economic development of the indigenous people would reduce their vulnerability to violent conflict, climate change, land dispossession, uneven distribution of resources, and lack of policy implementation, exclusion, marginalization, and exploitation. This endeavour calls for worldwide dialogue under the UN system to strengthen national regulatory frameworks as well as allow synergy of opportunities to cater to local development needs by development partners, especially international financial organizations. This also calls for more detailed studies which would shed lights on development aspirations and ways of life of indigenous communities in Africa.

Anthony Nyong



INTRODUCTION

In this introductory chapter, emphasis is put on providing a context that precipitated the writing of this issues Report. It

provides a brief introduction, background and rationale of the assessment and the methods used in data collection.

Introduction

This Issues Report presents the outcome of a diagnostic assessment of Indigenous People's (IPs) development issues on the African continent. The assessment was conducted by the Compliance and Safeguards Division of the African Development Bank. The issues report is intended to provide the Bank with basic information on the Indigenous People on the continent, their recognition among the Bank's Regional Member Countries (RMCs)³ and their participation in socio economic development. The report also presents technical options and recommendations that are important in guiding the Bank in the future revision of its policies, procedures

and guidelines intended to mitigate undesirable effects of development on the Indigenous People found in its RMCs. This issues report finalised in 2015 was prepared to serve as a basis for the Bank's deliberations on the issue of Indigenous People in Africa.

It is important to note that this issues paper is primarily prepared for internal use in the Bank to shed some light on the issue of Indigenous People in Africa and is not intended as a position paper for the AfDB on this matter. Therefore the views, conclusions and recommendations in this report are accordingly not to be regarded as so.

Background & Rationale of the Assessment

The last two decades have witnessed growing interest on Indigenous People issues as evidenced by major events such as the creation in 2000 of the UN Permanent Forum on Indigenous Issues (UNPFII); the establishment of a UN Special Rapporteur on the Rights of Indigenous Peoples in 2001; the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007⁴; and the establishment in 2008 of the UN Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). As a result, a number of international organizations, United Nations agencies and governments have formulated policies, strategies and action plans on Indigenous Peoples. Perhaps the most notable is the UN General Assembly of September 13th 2007 that adopted the Declaration on the Rights of Indigenous Peoples. The international declaration set a higher standard for International Financial Institutions (IFIs) and other agencies to strengthen their safeguard policies to ensure that

Indigenous Peoples concerns are adequately provided for. In several places⁵, the Declaration speaks of issues that may affect the performance standards of International Financial Institutions.

In response to emerging environmental and social safeguards challenges and the need to have harmonized approaches, several Multilateral Financial Institutions formed the Multilateral Financial Institutions Working Group on Environment (MFI-WGES) and the AfDB is an active participant. The Working group has discussed the issue of Indigenous People among others, particularly when the AfDB's Integrated Safeguards System (ISS) was discussed during the MFI-WGSS meeting held in Tunis in 2012. For the AfDB to take and maintain its position on policies and guidelines for Indigenous Peoples, there is a need to first thoroughly understand the issue of the Indigenous Peoples in Africa, taking into consideration not only the efforts by other

³ All countries in the African Union form the Regional Member Countries for the AfDB as opposed Non-African Member Countries.

⁴ Resolution was passed by a majority of 144 states. The four nations that voted against the resolution were Australia, Canada, New Zealand and the United States while in Africa, Burundi, Kenya and Nigeria abstained.

⁵ See Articles 5, 23, 39, 41 of the United Nations Declaration on the Rights of Indigenous Peoples.

development partners but also the Bank's RMCs positions on the issue. Hence the necessity to conduct this assessment.

The need for the African Development Bank to critically assess the issue of Indigenous Peoples in Africa was also driven by the demand by various AfDB stakeholders for the Bank to recognise the existence of Indigenous Peoples' unique circumstances and to develop a standalone policy, applicable to all of its operations to prevent and mitigate undue environmental and social harm on Indigenous People. The former President of the AfDB, Dr Donald Kaberuka met with representatives of IPs in 2012⁶. The representatives of the Indigenous People requested that the Bank develop a stand-alone Indigenous Peoples policy to safeguard the Indigenous People of Africa from undue harm likely that may result from major capital projects financed by the African Development Bank. Two major actions were undertaken as a result of the meeting between the Bank President and the Indigenous Peoples representatives. Firstly, the Bank commissioned this assessment to provide background information on

Indigenous People's development issues on the African continent. Secondly, the Bank organised a forum on IPs' issues that brought together a panel of experts, Indigenous Peoples groups, other relevant stakeholders and the Bank's management and staff to share knowledge and experiences on the issues of Indigenous People in Africa. Discussions from this forum informed this report.⁷

Also, the necessity for the Bank to assess the development issues of the Indigenous People was partly triggered by the trends and practices of other development financial institutions which are greatly influenced by the Paris Declaration⁸. The Bank acknowledges the work so far done by other MDBs and IFIs, and this report benefits from their experiences. It is hoped that the outcomes of this assessment will provide pertinent knowledge and information to the Bank's senior Management and the Bank staff to guide their decisions and actions for future development programmes, policies and strategies against poverty and when dealing with Indigenous Peoples' aspirations and perspectives.

Purpose of the Assessment

Although the African Development Bank recognizes the importance of addressing issues of inclusive growth among which can be urged include addressing the concerns of marginalized groups such as Indigenous Peoples in its operations, the Bank had not carried out a specific assessment of the issues affecting Indigenous Peoples in Africa to understand who they are, where they are and how they can be better accommodated in the Bank's quest to ensure inclusive growth. The limited information on Indigenous Peoples previously shared within the Bank and the Bank's borrowers had been generated as part of other studies and consultations under the Bank's Safeguard Policies. This report on Indigenous Peoples is the first of its kind in the Bank and it provides useful background information on Indigenous People on the African Continent. It is hoped that the information in this report and recommendations contained therein will help to establish a benchmark for developing the Bank's future policy proposals that will help mitigate undesirable

effects of development on the Indigenous Peoples across Regional Member Countries (RMCs).

As the Bank implements its long term strategy (2013–2022) which notably focuses on inclusive growth, it is inevitable that, at some point it will have to deal with issues concerning Indigenous Peoples through its operations. The main challenge to the Bank is to determine the location and precise identity of Indigenous Peoples across the African continent. Historically, this issue has always sparked controversial debates, with most African Governments often contending that all Africans are indigenous to Africa and that no particular group can claim indigenous status. It is important to note that under the circumstances, applying social safeguards for Indigenous Peoples or ethnic minorities in the Bank's development projects in Africa will definitely pose complex operational challenges mainly the issue of when, and by reference to what criteria, should they receive differentiated

⁶ The Indigenous People's representatives who met the President of the Bank were from Indigenous People of Africa Coordinating Committee (IPACC). Their meeting with Dr. Donald Kaberuka, then President of the AfDB culminated into the Bank convening a Regional Meeting on IP developments issues. The outcomes of the meeting informed this report.

⁷ The African Development Bank (AfDB) convened international experts, Indigenous Peoples groups, ministers, African Development Bank staff, and key stakeholders at the Forum on Indigenous Peoples' Development Issues in Africa held at the Sheraton Hotel in Tunis, Tunisia, from February 11-12, 2013. The forum sought to provide a platform for key stakeholders to discuss relevant policies on Indigenous Peoples' integration into development initiatives.

⁸ The Paris Declaration lays out a practical, action-orientated roadmap to improve the quality of aid and its impact on development. It puts in place a series of specific measures for implementation and establishes performance indicators that assess progress. It also calls for an international monitoring system to ensure that donors and recipients hold each other accountable – a feature that is unique among international agreements there has been a greater drive to harmonize environmental and social safeguards among Multilateral Financial Institutions.

treatment in AfDB projects is to remain a critical question. It is therefore hoped that this study will shed some more light on the current status of this issue among its RMCs.

The Bank as a development agency, acknowledges the right to effective participation in decision making as essential for the development of a truly inclusive and just society. The Bank has a number of social and environmental policies that apply to all of its operations, including public and private sector projects and policy-based lending. However the AfDB does not have a stand-alone policy on Indigenous

Peoples although it recognizes the importance of integrating the concerns of vulnerable groups such as the Indigenous Peoples in its operations. The report sets ground to guide the Bank in future discussions on this issue and formulates a basis to undertake certain plans and actions in relative to Indigenous People in the process of carrying out its development work in Africa. In addition, the study report and knowledge gained will be shared with development partners, working in Africa as information contained therein could be useful in future in the process of formulating or revising their own policies, guidelines and best practices.

Methodological Considerations

Approach and data Sources

Information presented in this issues report is principally based on data collected from a several sources and synthesized to give the Bank a more precise view of the issue of the Indigenous Peoples in its RMCs. Although a lot of work has been done by many reputable individuals and organisations⁹, it was not possible for the team to review all this useful materials because of time and logistical reasons. Only a limited number of reports were used for purposes of this report¹⁰ however, a list of other documents are listed at the end of this report for further reading and understanding of the issues presented and discussed in this report.

A participatory approach was employed in which the team solicited full and active participation by stakeholders at various level (Africa region and national level). This approach not only enriched the exercise but also enhanced stakeholders' sense of ownership. To carry out the assessment, the team collected primary and secondary quantitative and qualitative data through desk review, key informant interviews, focus group discussions, and field visits. The Desk research aimed to provide as much information as possible from existing documentation on the indigenous groups in Africa and other parts of the world. Documents reviewed included printed and electronic documents from official and unofficial sources. Field investigations were conducted in Uganda and Cameroon to collect and listen to different perspectives on the issue of Indigenous People in development initiatives.

The work previously done included interviews with members of IP groups, some leaders of IP organizations, human rights

activists, scholars, civil society representatives, government officials, AfDB staff, and others considered to have knowledge and insight on the conditions of IPs in various African countries. Also to enrich this report, in 2013, focus group discussions were held with three leading agencies working on the issues of IPs on the continent — International Work Group for Indigenous Affairs (IWGIA), Indigenous People of Africa Coordinating Committee (IPACC), and United Nations Economic Commission for Africa (UNECA) — Information collected at the time has been used to inform this report.

Data analysis

Data collected was edited, coded and compiled using a grid structure that grouped similar issues together to facilitate the quantification and analysis of findings. A content analysis was done to capture demographic, socioeconomic and development-related data across the 25 countries (Listed in Table 1). Another template was used to gather information on the policy framework and constitutional protection of indigenous populations in specific countries in Africa. The study team exerted utmost effort to ensure the validity and reliability of the findings by triangulating the data from various sources.

Peer review

Both the approach of the study and the preliminary findings of the assessment were presented to and reviewed by various stakeholders. The approach of the study was presented at the Forum on Indigenous Peoples'

⁹ A number of reports on Indigenous People have been made particularly by UN agencies, human rights activists, scientists, anthropologists and academia in Africa and across the world.

¹⁰ The publications of the International Workgroup for Indigenous affairs have greatly informed the contents of this report. We draw on both the statistics and the contexts provided by IWGIA to make various conclusions in this issues paper. More information can be accessed on <http://www.iwgia.org/regions/africa>

Development Issues in Africa held in Tunis, Tunisia on 11-12 February 2013, and used the opportunity to consult with various stakeholders and key informants who attended the Forum: representatives from the African Union Commission, United Nations Economic Commission for Africa, RMCs, Regional Economic Communities, World Bank, Global Environment Facility, United Nations Permanent Forum on Indigenous Issues, and civil society organizations, as well as leading academics. The design and approach of the assessment were substantially revised as a result of these discussions.

Preliminary findings from the study were also presented at the IWIGA 2013 meeting in Banjul, Gambia, and sent them to the IPACC Committee meeting in Cape Town, South Africa, to get the perceptions and opinions of the IP community and leadership on the issues raised by the study and to solicit the suggestions and recommendations of the most directly affected stakeholders. The presentations engendered a healthy and open discussion on ways of enhancing IPs' participation in development decision-making and securing the flow of development benefits into their communities in an inclusive and sustainable manner.

Paucity of authoritative/official information

During the course of data collection, it was established that there is limited information on the constraints to and opportunities for the development of Indigenous People in Africa particularly in the context of the African Development Banks operations; there was no authoritative and empirical information either on specific countries or on the continent as a whole. Much of the available literature

focuses on IPs and the international human rights laws and the protection of IPs in the African human rights system, but there is very little analysis regarding IPs' participation in socio economic development initiatives. It was also realized from national population census records that most African countries are reluctant to collect officially desegregated statistics that are specific on IPs. In most cases, IPs are treated in the same way as mainstream population. During interactions with government departments in the countries selected for this assignment, it was noted that government officials and some academics were unwilling to admit the existence of IPs in Africa or even discuss the issues related to them. Most people talked with in government circles consider the whole issue of IPs as a concept of Western origin with very little relevance to Africa, maintaining that the term Indigenous People should be refocused and instead use the term marginalized communities.

Structure of the Report

The report is divided into four main sections. Following this introduction, Chapter 2 clarifies the contentious issue of the definition of Indigenous People for purposes of this report and gives a general overview of the IPs and their recognition on the global and continental level and also provides a brief overview of selected Indigenous People's issues in Africa. In chapter three, the report presents a synopsis of the policies of various Multilateral Development Banks (MDBs) including the African Development Bank and its experience related to IPs in Africa. Chapter 4, provides a brief discussion of the key issues, conclusion and recommendations.

SITUATION ANALYSIS OF INDIGENOUS PEOPLES IN AFRICA

This section provides a situational analysis of the issue of Indigenous Peoples from both the global and African perspectives. We look at the demographic aspects, socio economic and livelihood aspects; and legislative environment while citing the salient issues that affect the

Indigenous People. The data presented in this section largely draws from the published works by many individuals and institutions but special mention is warranted for the works by the International Working Group for Indigenous Affairs (IWGIA).

Conceptualization, Recognition and Legal Status of Indigenous Peoples

International Definition of Indigenous People

There is no universally agreed definition of Indigenous Peoples. However the United Nations and the world community recognize that Indigenous Peoples live all over the world, including in Africa, and their plight is extensively discussed in the international fora. A preliminary working definition provided by the United Nations Working Group on Indigenous Populations¹¹ states as follows:

Indigenous communities, peoples, and nations are those that, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

In certain instances, this definition can be considered to be limited in context since it is heavily skewed towards pre-colonial societies and may not ably apply to a broader perspective that includes marginalized societies, which transcends the post-colonial era.

Another perspective is provided by Coates, 2004¹² who defines indigenous populations as --- *those groups especially protected in international or national legislation as having a set of specific rights based on their historical ties to a particular territory, and their cultural or historical distinctiveness from other populations.*

The above definition puts emphasis on national recognition and protection by both international and national laws. This implies that there is a problem in circumstances where national laws do not necessarily recognize certain segments of society as indigenous.

From the foregoing definitions, two issues arise. One is the uniqueness of a given community and its tie to a peculiar identity, history and territory. The second deals with statutory recognition. It is these two aspects that we interrogate in the African context as a precursor to gaining a deeper appreciation of Indigenous People in Africa.

Definition of IPs that is Pertinent to Africa

In the African sense, most inhabitants of African states are indigenous to Africa. These are societies that existed before colonisation, with unique characteristics, norms and identity as implied in the UN definition. This thus raises a strong objection among African countries to the use

¹¹ Definition originally proposed by Mr. José R. Martínez-Cobo, Special Rapporteur on Discrimination against Indigenous Populations, 1970.

¹² See K.N. Coates (2004): A Global History of Indigenous Peoples: Struggle and Survival.

of Indigenous People as a concept distinguishing some communities from others. This position was reflected during the debate in the UN General Assembly on the adoption of the UN Declaration on the Rights of Indigenous People in 2007. African states, in a decision adopted in a 2007 meeting of the AU Assembly of Heads of State and Government took the position that the vast majority of the people of Africa are indigenous to Africa¹³.

The failure to clearly determine who the Indigenous People in Africa are then poses another bigger question that the second definition by Coates tries to point to; statutory recognition. As we shall discuss in the later chapters in this report, the majority of African Countries have not formally recognized indigenous populations. African governments main concern is that using the term Indigenous People may entail special rights or prerogatives to certain groups or may obstruct the state from pursuing developmental endeavors of national interest that impact on the land and resource rights of these special groups of people. Silently of course, African governments are also concerned about the issue of the post-colonial boundaries of African countries which could arise with the recognition of Indigenous People on the African continent since these groups live across country borders.

According to the Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities¹⁴ (2005), adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session, the African Commission on Human and Peoples' Rights (ACHPR) and international mechanisms dealing with Indigenous Peoples' rights, the Indigenous Peoples in Africa are conceived as

".....generally nomadic and semi-nomadic pastoralists and hunter/gatherers who live in situations of marginalization and discrimination"

The ACHPR Working Group on Indigenous Peoples released a report in 2003¹⁵ which states that it was --- *not necessary or desirable to provide a strict definition of Indigenous Peoples, as such a definition could be exclusive and affect certain groups*¹⁶.

The ACHPR report¹⁷ also did address the common argument put forth by some groups that:

*'all Africans are indigenous' and stated that the overall characteristics of groups identifying themselves as Indigenous Peoples are those whose cultures and ways of life differ considerably from the dominant society and their cultures are under threat in some cases to the point of extinction*¹⁸.

It must therefore be appreciated that the issue of Indigenous People on the African continent is unique from the rest of the world.

Global Recognition of Indigenous People

- a. **United Nations system** — The UN set the main goals of the Second Decade (2005-2014)¹⁹ to strengthen international cooperation around resolving the problems faced by Indigenous Peoples in areas such as health, education, human rights, culture, the environment and social and economic development. The UN undertook further initiatives to promote the cause of Indigenous Peoples across the globe, including the establishment of the Working Group on Indigenous Populations (WGIP) in 1982 by the UN Sub- Commission on Prevention of Discrimination and Protection of Minorities; the Permanent Forum on Indigenous Issues which was established by the UN in 2000, and placed directly under the UN Economic and Social Council; the appointment of a Special UN Rapporteur for Indigenous Peoples by the Commission on Human Rights in 2001; the adoption of the UN Declaration on the Rights of Indigenous Peoples by the UN Human Rights Council in 2007 and the creation of a UN Voluntary Fund to support Indigenous Peoples' participation in international meetings. Other agencies such as the ILO and the World Bank have also taken initiatives to promote Indigenous Peoples' human rights. The ILO has elaborated a policy on support to Indigenous Peoples (with a particular focus on Indigenous

13 See Decision and Declarations of the Assembly of the African Union Eighth ordinary session 29-30 January 2007. http://www.au.int/en/sites/default/files/decisions/9556-assembly_en_29_30_january_2007_auc_the_african_union_eighth_ordinary_session.pdf

14 See ACHPR and IWGIA 2005, Report Of The African Commission's Working Group Of Experts On Indigenous Populations/Communities.

15 Ibid.

16 See ACHPR and IWGIA 2006, Indigenous Peoples in Africa: The Forgotten Peoples?

17 See ACHPR and IWGIA 2005, Report Of The African Commission's Working Group Of Experts On Indigenous Populations/Communities.

18 Ibid.

19 On 16 December 2005, the United Nations General Assembly adopted the Programme of Action for the Second International Decade of the World's Indigenous People (A/60/270, sect. II), and adopted «Partnership for action and dignity» as its theme (resolution 60/142).

Peoples in Africa and Asia) and ILO's Convention 169 is the only binding international instrument (still open for ratification) dedicated specifically to the rights of Indigenous Peoples. The World Bank, for its part, has had consultations with Indigenous Peoples in all regions of the world in relation to their policy of support to Indigenous Peoples and they are conducting a number of consultative meetings with Indigenous Peoples in Africa.

- b. **European Union** — The EU recognizes Indigenous People basing largely on the UN Declaration on the Rights of Indigenous Peoples. The EU supports Indigenous Peoples' rights to, inter alia, culture, identity, language, employment, lands and territories, health, education as well as their rights to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations. Also a number of EU policies provide guidance on how members work with Indigenous People. These include: The European Union European Convention for the Protection of Minorities, 1993; Commission of the European Communities: Working Document on Support for Indigenous Peoples in the Development Co-operation of the Community and the Member States, May 1998; and EU Resolution on Indigenous People within the framework of the Development Co-operation of the Community and the Member States, November 1998.
- c. **GEF** — Another notable agency that recognizes the indigenous communities is the Global Environment Facility. In its work in conserving biodiversity, the GEF identifies Indigenous People as pivotal partners in attaining the goals. The GEF notes that:

Indigenous Peoples have been responsible stewards of their lands and resources for thousands of years. Relying on traditional knowledge and sustainable resource

management practices, indigenous cultures have survived and thrived in all corners of the world.

Indeed, the GEF was one of the few international financial institutions to develop early on an independent public participation policy, which includes provisions for indigenous and local communities.

- d. **Other Development Agencies working in Africa** — Other Development Agencies working in Africa and have developed policies and strategies on Indigenous Peoples include among others Department for International Development-United Kingdom (DFID), Danish International Development Agency (DANIDA), International Fund for Agricultural Development (IFAD), and Norwegian Agency for Development Cooperation (NORAD)

The African Union Recognition of the Indigenous People in Africa

There is no doubt that the African Union, an organization that brings together all African states and conducts its business at the level of Heads of States and has close ties with the AfDB recognizes the presence of Indigenous People on the African continent. This is demonstrated majorly by the fact that the African Commission's Working Group on Indigenous Populations/ Communities is under the auspice of the African Union. This working group was established to work with state parties, national human rights institutions, civil society organizations, international institutions and other bodies that can inform it and cooperate with it on the problems faced by indigenous populations on the African continent. The Working Group of Experts was established at the 28th Ordinary Session (Cotonou, Benin - 23 October to 6 November 2000) and comprised three ACHPR Commissioners, three experts from indigenous communities in Africa and one independent expert on indigenous issues.

Location, Numbers and Livelihood of Indigenous People on the African Continent

Only few African countries have so far recognized the existence of Indigenous Peoples. However the definition of Indigenous People from an African perspective as "...generally nomadic and semi-nomadic pastoralists and hunter/gatherers who live in situations of marginalization and discrimination" gives us a more

focused description of the Indigenous People in Africa. The IWGIA and ACHRPR have gone a long way in enumerating the indigenous societies in Africa and Table 1 though not fully exhaustive gives a broader picture of the groupings, estimated population and major source of livelihood.

Table 1: Summary of key characteristics of Indigenous People in Africa

Country	Group	Population/ % of Population ²²	Source of Livelihood
Algeria	Amazigh	13,000,000	farmers
	Tuareg	141,000	pastoralists
Angola	San	24300	hunter-gatherers
Botswana	San	55,000	hunter-gatherers
BurkinaFaso	Tuareg	48,000	pastoralists
	Fulani	360,000	pastoralists
Burundi	Batwa	30,000-40,000	hunter-gatherers
Cameroon	Bakola/Bakyala	89000	hunter-gatherers
	Baka	54,000	hunter-gatherers
	Medzan	1,200	hunter-gatherers
	Mbororo	1.5 – 2 million	pastoralists
Central African Republic	Baaka(Bayaka,Biaka)	184,640	hunter-gatherers
	Mbororo	4,038	pastoralists
Congo Reoublic of	Yaka	300 000 - 400 000	hunter-gatherers
Democratic Republic of Congo	Batwa (Bacwa, Bambuti)	900,000	hunter-gatherers
Egypt	Amazigh	27,000	pastoralists
Ethiopia	Somalis	4,600,000	pastoralists
	Afars	1,276,867	pastoralists
	Borana	1,211,000	pastoralists
	Kereyu (Oromo)	10,000	pastoralists
	Nuer	145,000	pastoralists
Gabon	Baka	7,000	hunter-gatherers
Kenya	Ogiek	78,691	hunter-gatherers
	Watta	2,000 - 3,000	hunter-gatherers
	Sengwer	13,500	hunter-gatherers
	Yaaku	600	hunter-gatherers
	Maasai	1,000,000	pastoralists
	Samburu	223,947	pastoralists
	Elmolo	3,300	pastoralists
	Turkana	988,592	pastoralists
	Rendille	60,000	pastoralists
	Borana	185,000	pastoralists
	Somali	2,680,000	pastoralists
	Gabra	89,515	pastoralists
	Pokot	635,000	pastoralists
Endorois	10,000	pastoralists	
Orma	66,000	Nomadic Pastoralists	
Saboat	240,000	Agro pastoralists	
Sakuye	27,000	S-Nomadic	
	Dasenach	12,500	Agro pastrolists Fishing
Libya	Tuareg	600000	pastoralists
	Amazigh	600,000	pastoralists
Mali	Tuareg	1,530,000	pastoralists
	Amazigh	850,000	pastoralists

Country	Group	Population/ % of Population ²²	Source of Livelihood
Morocco	Amazigh	20,000,000	farmers/Pastoralists
Namibia	San	27,000	hunter-gatherers
	Himba	50,000	pastoralists
Niger	Tuareg	9.3%	pastoralists
	Fulani	1.5 million	pastoralists
	Toubou	267,450	pastoralists
	Peul	1,515,550	transhumant pastoralists
Nigeria	Ogoni	850,000	small-scale agriculture
Rwanda	Batwa	47,120	hunter-gatherers
South Africa	San	10,000	hunter-gatherers
Tunisia	Amazigh	98,000	farmers
Uganda	Batwa	3500	hunter-gatherers
	Benet	20,000	hunter-gatherers
	Karamojong	966,245	pastoralists
Tanzania	Hadzabe	1,000	semi-nomadic hunter gatherers/ small scale agriculture
	Akie	5,268	hunter-gatherers
	Maasai	311,000	pastoralists
	Barabaig	50,000	pastoralists
Zimbabwe	San	1,200	hunter-gatherers

²² Various sources including Population Census from different countries and Websites of organisations working with Indigenous People. This data is largely an estimate but provides a s

Source: Author's Compilation Based on various sources: ACHPR 2006, CIA World Fact Book, and Population statistics from individual countries

Legislation for IPs among African Countries

The recognition of Indigenous People in Africa is gradually rising. A few African countries noticeably central African countries have so far recognized the existence of Indigenous Peoples. Countries such as Kenya and Namibia are also gradually opening up. However, widespread lack of constitutional recognition persists in all other parts of Africa

Apart from the Republic of Congo, where the Parliament on the 30th December 2010, adopted a law for the promotion and protection of the rights of Indigenous Peoples, no other countries in Africa have specific legislation that provide for the protection of Indigenous Peoples' rights. This situation is thoroughly documented in the research report made by the ILO, ACHPR and the University of Pretoria: "Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the Constitutional and Legislative Protection of the Rights of Indigenous Peoples in 24 African Countries". 2009.

The Congolese law for the promotion and protection of the rights of Indigenous Peoples is the first of its kind in Africa,

and its adoption is a historic development for Indigenous Peoples on the continent. Hopefully this law will be a valuable tool for improving the situation of the Indigenous Peoples in the Congo and a source of inspiration for other countries in Africa to take similar initiatives.

Some promising developments are as follows: In Kenya a new constitution has been adopted which provides for considerable decentralization and recognition of historically marginalized groups to which Indigenous Peoples belong. A new national land policy has also been adopted in Kenya, which provides for collective land rights and de-centralized land governance structures. However, still no explicit recognition of Indigenous Peoples exists in Kenya. In Burundi the constitution provides for special representation of the indigenous Batwa people in the National Assembly and the Senate. In Cameroon a draft law on Marginal Populations has been produced, however, this draft law does not specifically recognize Indigenous Peoples nor address some of their key concerns. The Central African Republic has recently – as the first country in Africa – ratified the ILO Convention 169.

Box 1: Key Questions for Mainstreaming Environmental and Social Considerations**A case of Pygmies in DRC**

- **Indigenous Peoples** is the term accepted by the government and civil society organisations when referring to the Pygmy people of the Democratic Republic of Congo (DRC). The government estimates that there are around 600,000 Pygmies in the DRC (1% of the Congolese population), while civil society organisations argue that there are up to 2,000,000 (3% of the population). They are found in ten of the country's eleven provinces and are divided into four main groups: the Bambuti (Mbuti), the Bacwa (Baka), the Batwa (Twa) of the west and the Batwa (Twa) of the east.
- **Expropriation of Indigenous Peoples' lands:** 65% of the DRC is covered in forest. Most indigenous Pygmies live in the forest and depend on it for their survival. They are considered to be the first people or inhabitants of the country. As a direct result of historical and ongoing expropriation of indigenous lands for conservation and logging, many have been forced to abandon their traditional way of life and culture based on hunting and gathering and become landless squatters living on the fringes of settled society. Some have been forced into relationships of bonded labour with Bantu "masters". Problems of land access are acute in the east of the DRC, particularly in North and South Kivu where there is a high population density. In Orientale, Equateur and Bandundu provinces, they are victims of the industrial operations that are invading their living spaces. The creation of protected areas also represents a real problem for the Pygmies, particularly given the strict policing of conservation areas that have been established in all national parks.
- **The situation of Indigenous Peoples in the Democratic Republic of Congo:** The Indigenous Peoples' overall situation is considerably worse than the national population: they experience inferior living conditions and poor access to services such as health and education. Their participation in the DRC's social and political affairs is low, and they encounter discrimination in various forms, including racial stereotyping, social exclusion and systematic violations of their rights.
- **Recognition of Indigenous Peoples rights:** Over the last few years, new legal texts have had an influence on advocacy work for the promotion of indigenous rights. These relate, for example, to the 2002 Forest Code, the new 2006 Constitution and the UN Declaration on the Rights of Indigenous Peoples, to which the DRC is a signatory.

Source: IWGIA Website

Key Challenges facing Indigenous persons

A lot of work²³ has gone into discussing the key challenges faced by Indigenous People by various institutions and agencies. These include: access to land, justice, representation and rights among others. In this report however, focus has been put on three key challenges that are considered to have direct implications to AfDB areas of interest i.e. lack of recognition, access to land and other production resources; and marginalization.

Lack of recognition

Perhaps the biggest challenge facing indigenous populations is the lack of state recognition. Given the challenges in determining who the Indigenous People are in Africa, African countries have not taken keen interest in constitutionally defining and recognizing indigenous persons as discussed in section 2.3. This is also notable in the statistics in table one above where the exclusion of the Indigenous People is evident. Despite many countries conducting Population

censuses, it was observed that most countries don't disaggregate the data. They simply enumerate the indigenous populations as part of a wider ethnic groupings. As a result, the figures presented are population estimates. This lack of recognition has a twofold implication. First, indigenous communities remain "forgotten" and secondly their key issues are anchored in a "vacuum". In some extreme cases like the Amazigh of Libya²⁴ the governments have gone ahead to ban the indigenous cultures from being practiced. Access to land and resources.

Access to land

By nature of their heavy reliance on nature for livelihood, Indigenous People are found in places that are often reserved as conservation areas. Indigenous populations are highly concentrated in forests and game parks, a situation that usually puts them in direct conflict with national bodies in charge of conservation. In many instances, these places

23 For further reading see IWGIA-ACHPR 2006 Indigenous Peoples in Africa: The Forgotten Peoples? The African Commission's work on Indigenous Peoples in Africa.

24 See <http://www.middleeasteye.net/in-depth/features/amazigh-libya-revive-their-previously-banned-language-1206307999>

were gazetted during the colonial periods. This trend has continued up to this day with new lands occupied by Indigenous People being cordoned off. A case in point is the landmark ruling by the African Commission on Human and People's Rights for the Endorois people in Kenya²⁵ who had been evicted from their land in 1970 for tourism purposes. A similar case of forceful eviction is that of the Sengwer indigenous people who were evicted in the Cherangany hills in January 2014²⁶. In Ethiopia, pastoral communities have faced evictions with their land being passed on to commercial farmers as developers, creating conflict between the communities and the population²⁷. In the Central African Republic, the Bakas were forced off the land when government leased it to a rubber company, Hevecam. Although they were resettled, their livelihood was greatly affected.²⁸

Marginalization

Indigenous People are generally poorer than the other tribal groupings in many countries. This mainly arises

from the lack of access to opportunities particularly health and education. Both health and education statistics tend to be the worst among indigenous populations. This is even worsened by the fact that this is rarely given the due attention it deserves. With regard to health, as noted by Ohenjo 2006, “--- *In Africa, poor health in the general population is widely recognized, but the consistently lower health position and social status of Indigenous Peoples are rarely noted*²⁹”. The education situation of Indigenous People is characterized by both structural and access challenges. As noted by IWGIA³⁰ in their analysis of access to education, indigenous people are critically disadvantaged by the formal education system. First, the curriculum seldom reflects the realities of the Indigenous Population (as result, even in circumstances where education facilities are offered to the IP, they are usually not receptive to these services) and secondly education infrastructure is rarely located within their localities. It is therefore worth noting that interventions targeting IPs should put emphasis on not only provision of the services, but also packaging the services in a manner that will be appealing to the IPs.

25 For further reading see <https://www.hrw.org/news/2010/02/04/kenya-landmark-ruling-indigenous-land-rights>

26 See <http://www.forestpeoples.org/tags/illegal-and-forceful-evictions-sengwer-indigenous-people-their-ancestral-lands-cherangany-hills>

27 See http://www.achpr.org/files/specialmechanisms/indigenoupopulations/expert_report_on_indigenous_communities.pdf

28 See, entral Africa: Evicted, Pygmies of Congo Basin Rainforest Now Want Ancestral Land Back, <http://allafrica.com/stories/201507241736.html>

29 Ohenjo, Nyang'ori et al.: Health of Indigenous People in Africa, *The Lancet*, Volume 367, Issue 9526, pg 1937 – 1946 June 2006

30 See <http://www.iwgia.org/culture-and-identity/indigenous-peoples-and-education>



WORKING WITH INDIGENOUS POPULATIONS

In this chapter, attention is drawn to policies and instruments adopted by international financial institutions in dealing with Indigenous People. Key similarities and variances in approaches adopted by each institution are highlighted. This is cognizant of the unique environment in which each institution operates. Lastly a highlight on the experiences of the AfDB in implementing projects in RMCs with a direct impact on IPs is provided.

Multilateral Development Banks: Policies/ Frameworks for Indigenous Peoples

Multilateral Development Banks (MDBs) at the global level such as the World Bank, and those at the regional level like the Asian Development Bank and the African Development Bank, remain the most prominent financiers of development in the world. In an effort to ensure that projects they finance do not have adverse effects on the environment or the populations, the MDBs have designed specific policies that have to be respected by the borrowing countries for the effective realization of projects³¹. In 1982, following criticisms of its projects' impacts on Indigenous Peoples, especially in Latin America, the World Bank issued a brief operational policy statement outlining the procedures for the protection of the rights of these people in Bank-financed projects³². The World Bank became the first MDB to have a policy on Indigenous Peoples, and since then other MDBs such as the Inter-American Development Bank, the Asian Development Bank, and the International Finance Corporation have developed stand-alone policies on Indigenous People.

African Development Bank (AfDB)

In 2012, during the process of developing its ISS, the African Development Bank held various consultations in Kenya, Zambia, Gabon, Nigeria and Morocco that discussed several issues including Indigenous Peoples. The Bank also organized a Forum on Indigenous Peoples' Development Issues in Africa, held in Tunis, Tunisia on 11-12 February 2013 to dialogue on development issues of the Indigenous Peoples in Africa. During these consultations and the

31 See Samuel Nnah Ndobe and Halleson Nzene Durrell 2012: Why A Stand-Alone Indigenous Peoples Policy Within The African Development Bank's Integrated Safeguards System An Assessment by the CSO Coalition on the AfDB <http://www.forestpeoples.org/sites/fpp/files/publication/2012/11/why-standalone-ip-policy-afdb-s-iss.pdf>

32 See, Shelton H. Davis 1993: The World Bank and Indigenous Peoples at http://www-wds.worldbank.org/serlet/WDSContentServer/WDSP/IB/2003/11/14/000012009_20031114144132/Rendered/PDF/272050WB0and0Indigenous0Peoples01public1.pdf

Forum, some participants supported a stand-alone Policy or at least an Operational Safeguard (OS) on Indigenous Peoples in the ISS, while others expressed concerns on the sensitivity of Indigenous Peoples' issues and its politically divisive nature. Several participants suggested that Indigenous Peoples should be treated as a category of vulnerable people arguing that African countries have distinct and varying vulnerable groups and therefore preparing a stand-alone policy or OS on one vulnerable group over-emphasizes the issue of Indigenous People and is a misplacement of the Bank's priorities to promote inclusive growth. It is important to note that some states declined the Bank's invitation to the Indigenous Peoples Forum, explaining that they do not have any special Indigenous Peoples in their countries, as all their citizens are indigenous. One country noted that it is a fragile state coming out of a civil war and had important developmental priorities and was not ready to discuss diversionary issues like Indigenous Peoples.

Considering all the arguments and contributions put forward by all its stakeholders, the development of the ISS was finalized mid-2013. In December 2013, the African Development Bank Board approved the Integrated Safeguards System (ISS) and it became operational on July 01st 2014. The ISS includes the Policy Statement (PS) which is a declaration of the Bank's commitment to environmental and social sustainability and to reduce potential risk of non-compliance to its operations and Operational Safeguards (OSs) to be applied to all the Bank-financed projects³³. The ISS has a wide scope of coverage as it extends both to public and private operations and for lending and non-lending activities. In terms of innovation, the ISS, apart from providing integration between social and ecological considerations, includes climate change issues. In terms of structure, the ISS includes a Safeguard Policy Statement. Although the operational safeguards contained in the ISS are in some cases drawn from existing Bank's policies, the ISS does not replace the existing Bank policies. The ISS has five Operational Safeguards:

- a. Operational Safeguard (OS 1): Environmental and Social Assessment
- b. Operational Safeguard (OS 2): Involuntary Resettlement
- c. Operational Safeguard (OS 3): Biodiversity and Ecosystem Services

- d. Operational Safeguard (OS 4): Pollution Prevention and Control, Greenhouse Gases, Hazardous Materials and Resource Efficiency
- e. Operational Safeguard (OS 5): Labor Conditions, Health and Safety

The ISS primarily treats Indigenous People as a special case of vulnerable groups. Emphasis and approach on vulnerable groups in the ISS is premised on the Bank's experience in implementing its several E&S standards, policies, and guidelines. The intention is not to focus exclusively or heavily on one group, such as Indigenous People, but encompassing a wider range of groups that can be impacted by its operations. Issues concerning Indigenous Peoples are addressed by integrating a number of essential social safeguard principles consistent with the general guidelines adopted by the MFI-Working Group on the Environment. These include: broad community support, consideration of community impacts, vulnerable groups (including minorities, women, Indigenous People and cultural heritage); adoption of free, prior and informed consultation, establishment of genuine grievance and redress mechanisms at the project level, protection of Indigenous Peoples and other local communities from infringements that erode their rights over their property, addressing socio-cultural issues, protection of the rights of local communities in using their natural resources, including land in a sustainable manner and use of indigenous knowledge.

World Bank

The World Bank is in the process of reviewing and reforming its Environmental and Social Safeguard Policies³⁴ which embrace the Bank's do-no harm approach. These policies, which include the Indigenous Peoples Policy, are meant to provide critical protection for Indigenous Peoples and others affected by Bank-financed projects. The World Bank brief Operational Manual Statement (OMS 2.34)³⁵ on indigenous and tribal peoples was the Bank's first formal policy on integrating Indigenous Peoples in the Bank's project financing cycle. In 1991, the Bank replaced the OMS 2.34 with Operational Directive 4.20 (OD 4.20) on Indigenous Peoples and this Operational Directive was revised and replaced in 2005 with the Operational Policy 4.10 (OP 4.10). This policy establishes the processing requirements for Bank's financing

33 AfDB 2012, Strategic Choices Made In The Design Of The Integrated Safeguards System (Iss): Draft Report on Options for the Iss <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/AFDB%20ISS%2023022012%20ENGLISH.pdf>

34 The World Bank has held consultations in 18 countries across all regions between August and December 2015. For more, See <https://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>

35 See, Shelton H. Davis 1993: The World Bank and Indigenous Peoples at http://www-wds.worldbank.org/servlet/WDSContentServer?WDSPath=IB/2003/11/14/000012009_20031114144132/Rendered/PDF/272050WB0and0Indigenous0Peoples01public1.pdf

projects, such as screening, social assessment, consultation with communities, preparation of plan or framework and disclosure. The policy insists that the Bank shall provide project financing only where free, prior, and informed consultation results in broad community support to the project by the affected Indigenous Peoples

Inter-American Development Bank

The Inter-American Development Bank (IDB) adopted in 2006³⁶ its own policy on Indigenous Peoples. Despite being considered as a latecomer in developing language on Indigenous Peoples, initiated by the World Bank (1982) and followed by the Asian Development Bank (1998), the IDB's Indigenous Peoples Policy seemed to afford a broader coverage to the issues of concerns to Indigenous Peoples than the other international financial institutions at the time. The approach of the IDB can be very comprehensive if one considers that Indigenous Peoples in the Americas make up about 10 percent of the region's population and the momentum by Indigenous Peoples in Latin America to assert their rights in the political, social and economic life of the respective countries. The policy prohibits the involuntary settlement of Indigenous Peoples without their consent, the financing of projects where there is the exclusion of Indigenous Peoples on the basis of ethnicity, financing of any operation that fails to comply with the applicable legal norms and safeguards, and the financing of projects that fail to respect the right of uncontacted Indigenous Peoples to remain in said isolated condition and to live freely according to their culture. The IDB's Policy is conceived to develop a greater visibility for Indigenous Peoples and their specificity and to contribute in achieving a systematic and relevant mainstreaming of indigenous issues in national development agenda and in its own operations portfolio.

European Bank for Reconstruction and Development

The European Bank for Reconstruction and Development (EBRD)³⁷ in May 2008 adopted a new set of environmental and social policy and performance requirements to be applied to the Bank-financed projects. This new policy included a Performance Requirement (PR 7) on Indigenous Peoples. This PR recognizes the role Indigenous Peoples may play in the process of transition towards open-market economies and managing activities and enterprises as

partners in development alongside the private sector and their governmental representatives. PR 7 depends on the following priorities for Indigenous Peoples: partnership, need for special measures and need for free, prior, informed consent (FPIC). PR 7 was intended to ensure that the transition process fosters full respect for the dignity, rights, aspirations, cultures and the natural resource-based livelihoods of IPs and avoid adverse impacts of projects on these peoples, or when avoidance is not feasible, to minimize, mitigate or compensate for such impacts. PR 7 where applicable shall enable IPs to benefit from projects in a culturally appropriate manner and support the client to establish and maintain an ongoing relationship with the IPs affected by the Bank financed project throughout the life of the project.

Asian Development Bank

The Asian Development Bank (ADB)³⁸ was one of the first regional development banks to adopt a specific policy on Indigenous Peoples in 1998. The ADB's move was in response to the growing pressure of Indigenous Peoples' groups in Asia following the denial of some of the governments of the existence of Indigenous Peoples, and their effective participation in international fora such as the UN Working Group on Indigenous Populations. As part of a Bank-wide push between 2007 and 2009 to consolidate safeguard standards, the policy on Indigenous Peoples was updated and incorporated into a Safeguard Policy Statement, a combined document which included safeguard standards on the environment, resettlement and Indigenous Peoples' issues.

International Finance Corporation (IFC)

The World Bank's private sector arm, the International Finance Corporation (IFC), operates under its Sustainability Framework, which includes a Policy on Environmental and Social Sustainability, the Performance Standards, and Access to Information Policy. First adopted in 2006, IFC revised its Sustainability Framework in 2011. There are altogether eight Performance Standards with a specific standard (Performance Standard 7) on Indigenous Peoples. This specific standard recognizes that Indigenous Peoples, who in most cases are minority as compared to the mainstream groups, are often marginalized and vulnerable to abuse. Performance Standard 7 (PS 7) has as objective to foster the respect for the human rights,

36 See <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1442299>

37 See EBRD 2014 environment and social policy <http://www.ebrd.com/downloads/research/policies/esp-final.pdf>

38 The Policy was formulated in April 1998. For more see <http://www.adb.org/sites/default/files/institutional-document/33441/files/policy-indigenous-peoples.pdf>

dignity, aspirations, culture and natural resource-based livelihoods of Indigenous Peoples, as well as to anticipate and avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not possible to minimize and/or compensate for such impacts. PS 7 also envisages to promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner and to establish and maintain an ongoing relationship based on Informed Consultation and Participation with the IPs affected by a project throughout the project's life cycle. It shall also ensure that the Free, Prior, and Informed Consent (FPIC) of the affected communities of IPs and to respect and preserve the culture, knowledge and practices of IPs. Like the World Bank's OP 4.10, the IFC Performance Standard on IPs applies to only those groups of Indigenous Peoples who maintain a collective attachment, but it could also apply to IP groups that have lost collective attachment to distinct habitats or ancestral lands because of forced severance, conflict, government resettlement programs, dispossession of their lands, natural disasters or incorporation of such territories into an urban area.

The IFC's Performance Standards have served as the benchmark for other private sector financial institutions such as the "Equator Banks," and thus the recently revised set of Performance Standards will likely be reflected in the Equator Principles framework that the Equator Banks pledge to adhere to. This would help in ushering in a harmonization process at the financing of projects that may have adverse impacts on Indigenous Peoples of these peoples in accordance with their wishes.

All the financial intermediaries of the EBRD are also expected to respect this policy. However some civil society organization such as the Bank Information Center have critiqued the new policy for its vague categorization language especially related to projects falling under categories A and B. Though the policy references UNDRIP, its definition of consent is limited and restricts the implication of the relevant indigenous communities to actively have a say on the project implementation. In a nutshell, like the IFC policy, the EBRD policy can be considered as a watershed in the improvement of investment practice especially by private financial institutions who act as financial intermediaries.

AfDB Experience with Indigenous People in Africa

AfDB acknowledges the existence of marginalized and vulnerable segments of societies in Africa. Emphasis is placed on assessing, supporting, and monitoring vulnerable groups through targeted means, measures, and modalities in Bank-financed operations. However the AfDB is a regional Bank operating on a continent with unique socio-cultural realities. "Ethnicity" and "indigenous persons" are extremely contentious terms given social, cultural, and political contexts and realities across Africa. For this reason the Bank emphasizes issues inclusion for the vulnerable in its operations. This is because Vulnerability is a core social concern cutting across all facets of African societies.

The Bank's experience in dealing with Indigenous People in its regional member countries is limited to a few projects mainly through implementation of its involuntary resettlement policy. This section draws from the review of project documentation, ESIA's, and Resettlement Action Plans (RAPs) prepared particularly for category 1 projects involving resettlement that are large in coverage and function and were likely to cause significant harm to vulnerable groups. It also addresses how such negative impacts were avoided, mitigated or compensated for in

accordance with the Bank's formal policies and procedures. In general, Bank projects have not used Indigenous Peoples' plans or specific initiatives for Indigenous People. Indigenous People have been included as part of the resettlement schemes in various locations. This section looks at 5 Category 1 projects that are best considered to demonstrate the Bank's experience with preparation of ESIA's and implementing ESMPs and RAPs—one from the private sector and the others from the public sector.

Nuweiba Power Plant and nomadic Bedouin in Egypt³⁹

The Nuweiba Combined Cycle Power Plant Project (2009), which was proposed by the Egyptian Electricity Holding Company/East Delta Electricity Production Company to produce 750 MW of electricity, was abandoned because of fears that it would affect Bedouin communities identified as Indigenous People. The requesters for registration of a complaint to the Internal Review Mechanism (IRM) maintained that the Nuweiba communities will not profit from the project and that Indigenous People do not

³⁹ For further reading See Impact Assessment of the South Sinai Power Plant at Nuweiba on the local Tourism industry http://www.hemaya.org/localhost_8080/hemaya/images/stories/hemaya/PDF/Nuweiba_Tourism_Expert.pdf

qualify for the jobs the project would provide. They were also concerned about the impact of a large number of migrant workers who are unfamiliar with the Bedouin culture and customs: “The foreign workforce will leave a negative impact on the Indigenous People of Nuweiba, leading to its further marginalisation as a social group, which might lead to social unrest, and deepen already existing resentments.”

The private sector Kribi Power Project⁴⁰

The project, a 16MW gas plant and 225kV transmission line in Cameroon (construction began in March 2009 and was commissioned in June 2013), was considered to have significant potential impacts on the Bakola IPs. IFC was a co-financier, and a Community and Indigenous People’s Plan was developed to ensure the project’s compliance with the IFC’s safeguard performance standards. The Bank and other financiers accepted the plan as part of the environment and social safeguarding requirements. In an interview, an indigenous person in the area indicated that the numbers of households resettled were insignificant, and little is known about the resettled families and the impact of the resettlement. There were no ex-post monitoring reports available for the Team to record lessons learnt from this experience.

Mombasa-Addis Ababa Road construction and upgrading (2012)⁴¹

This transnational road project displaced people around the border area between Ethiopia and Kenya. The project upgraded the Ageremariam – Moyale – Merille River Road to bitumen standard. Because of the magnitude of the road works envisaged, the possible environmental impacts and the potential number of households to be displaced, the Mombasa-Addis Ababa highway project was classified as Category 1. Along the Ageremariam – Moyale section of the project road in Ethiopia, it is estimated that a total of 64 households

(320 people) were affected by losing building structures, crops, and/or trees. The indigenous communities, the Borenas, who live between the two countries, are mostly pastoralists who do not have official legal rights over land; their communal land is traditionally administered by elders. Thus, the estimated property in the RAP does not cover land and trees that are traditionally the

sources of livelihood to these indigenous pastoralists. The seasonal mobility and the direct dependence of these communities on land for grazing, trees as livestock forage, and fuel wood was not factored in when the impact of the road was analyzed and the level of compensation was evaluated. Again, there is no RAP implementation report or grievances registered to allow the making of informed conclusive statements on how the IP issues were addressed on this project.

The Lom Pangar Hydropower Project⁴²

The Lom Pangar Hydropower Project in Cameroon (2012), is a multi-donor project that triggered the World Bank safeguard and policy disclosure procedure called “backup”. However, the diagnostic review carried out by the World Bank notes that the Operational Policy 4.10, Indigenous Peoples, was not triggered, although the presence of IPs seems indisputable. As part of the project, the AfDB financed the power line that affects all the villages between Deng Deng and Bertoua—19 villages where indigenous ethnic groups predominate. The original route was located close to the road and crossed many villages, with significant impacts. The Bank decided to change the route, locating it behind the villages, so it involves very few house demolitions. However, the changed route affects the land for agriculture and especially plantations; the Bank has paid individual and collective compensation under the resettlement plan and prepared a plan for regional economic development.

A review of the comprehensive action plan and RAP for the project reveals several points: (i) resettlement was seen only in terms of expropriation of the land and livelihood activities; hunting and gathering were not considered in resettlement schemes; (ii) the risk of major conflict that may arise from resettlement schemes was not taken into consideration and not diagnosed by ESIA activities; (iii) conserving biodiversity and restricting free access to natural resources are also issues that were not considered during resettlement, and measures to mitigate them were not formulated in the RAP; (iv) serious cost issues can arise in multi-donor projects—in this project there was a serious cost discrepancy between the World Bank and AfDB because of different definitions of activities that were to be implemented; and (v) the electrification of 19 villages, a clear benefit to the local people, was never noted as a positive impact of the project.

40 See <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/Kribi%20RAP%20Ex%20Summary%20October%202010%20final.pdf>

41 See appraisal report <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/ARMuli01%20En.pdf>

42 See Social impact Assessment report http://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/2011%20Lom-Pangar%20R%20C3%A9sum%20C3%A9%20Environnemental%20et%20Social_EN.pdf

The Koka Hydro-Electric Dam Expansion

The Koka Hydro-Electric Dam Expansion project in Ethiopia was implemented in the 1970s. Under this project the AfDB provided financing for the Ethiopian Light and Power Authority to build, own, and operate the expanded power station. The project site affected several villages of Southern Shewa province: over 1000 households were displaced by the project, most of them temporarily. The Ethiopian Government promised to compensate the displaced population for the loss of their land with an equivalent new piece of land and a compensation package for loss of livelihood. Government officials interviewed for this study indicated that the resettlement scheme was not implemented because there was a political upheaval and a change of government soon after the start of the project, and the new authorities felt that they were not bound by promises made by the previous government. They also said that the country was facing famine at the time and the funds were likely diverted to feed starving Ethiopians in the north of the country. The Bank has oversight to hold governments accountable when it comes to implementation of its E&S policies and guidelines.

Gilgel Gibe III Dam in Ethiopia⁴³.

The AfDB was scheduled to consider financing to the Government of Ethiopia for the Gibe III hydropower dam on February 25, 2009. However in early February 2009, a request for an investigation was filed by an NGO called Friends of Lake Turkana to the Bank's Compliance Review and Mediation Unit (CRMU); on March 26, 2009

the Bank's CRMU officially registered the request. A mediation process was then initiated. Friends of Lake Turkana (FoLT), is community association formed in 2008 specifically in response to threats to the viability of the world's largest permanent desert lake in northwestern Kenya and southwestern Ethiopia. FoLT's membership consists of people from the Lake Turkana region, where an estimated 300,000 people rely in some way on the lake for their livelihood and survival; according to the request filed with the CRMU, all of these people from Lake Turkana region are from ethnic groups often described as "indigenous." (These groups include the Rendille, Samburu, Turkana, Elmolo, Dassanach, Ariaal, and Gabbra.). These peoples are usually described as pastoralists, but their lifestyles also include cultivation and, in some cases, fishing – activities which are possible only because of the lake. Therefore the habitant's activities are intimately bound up with the fragile ecosystem in which Lake Turkana is a dominant element.

In the complaint filed, it was alleged that there was poor analysis and exclusion of the Turkana people in project preparation, violating multiple Bank policies, including its: Environmental and Social Assessment Procedures, Policy on Poverty Reduction, Resettlement Policy, Public Disclosure Policy, and Policy for Integrated Water Resources Management. It was argued that if the Gibe III Dam was built, it would have a serious impact on the flow and volume of the Omo River, which provides some 80% of the Lake's replenishing inflow hence serious negative impacts on the indigenous communities living and working around Lake Turkana. Eventually the Bank withdrew from financing of the Gibe III Dam.

43 See, <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/GIII%20ESMP.pdf>

DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

This chapter provides a discussion of the key issues identified with regard to IPs in Africa in the context of the African Development Bank's work on the continent.

The chapter also includes recommendations on the way forward, provides available options for the Bank and draw conclusions.

Discussion

Relevancy of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the African Charter on Human and Peoples' Rights (ACHPR).

Proponents of the standalone policy argue that the Bank needs to be consistent with the rights of peoples and Indigenous Peoples as set out in the UNDRIP and the ACHPR. Although most African states signed the UNDRIP, they subsequently affirmed that the vast majority of the peoples of Africa are indigenous to the African Continent and noted that the UNDRIP had numerous matters of fundamental political and constitutional concern that could impact on national and territorial integrity. These include the lack of definition of Indigenous Peoples and their right to self-determination and to establish distinct political and economic institutions. Although widely referred to by Indigenous Peoples, the UNDRIP is just a declaration and it is not legally binding. The ACHPR has no direct provision on indigenous rights or on minority groups generally.

Recognition of Indigenous People by the African Union Commission

There is no doubt that the African Union recognizes that there are Indigenous People on the African continent. The Bank's failure to take a position on the issue of Indigenous People can be viewed as if the Bank is not willing to take into consideration the enormous work done by the African Union Commission's Working Group on Indigenous Peoples and its ground-breaking report of the commission adopted by the Commission at its 34th Ordinary Session in Banjul in November 2003. Also it can be argued that a major African institution like the African

Development Bank with close ties to the African Union and its African Commission on Human and Peoples' Rights cannot ignore the voices of some of the most marginalized sections of the African people. However, as much as the two institutions are interlinked, the African Development Bank has no binding legal obligation to tow the African Union declarations or commitments.

Constitutional recognition of Indigenous Peoples on the African Continent

Although many African States went ahead to vote for the UNDRIP, only one African country i.e.; Congo Brazzaville, has specific legislation on Indigenous Peoples. The Central African Republic has only gone as far as ratifying the ILO Convention 169 while Kenya has only a mention of "Indigenous Communities" in Article 260 of its revised constitution of 2010. This cautious approach by the AfDBs member states stems from their general belief that all Africans are indigenous to Africa and that the issue of Indigenous Peoples is divisive. In dealing with Indigenous People issues in its operations, the only thing the Bank can do is to recognize and respects the sovereignty of its member countries, and support efforts by these states to meet international commitments and obligations.

Lessons from other Multilateral Finance Institutions

Although the Multilateral Finance Institutions have adopted a Common Framework on Environmental Assessments, there is a variation in the way that these Institutions treat issues of Indigenous Peoples, largely reflecting regional specificities and mandates. The AfDB, UNDP, EIB and

EBRD have mainstreamed Indigenous Peoples into their Safeguards System, while the World Bank, the Asian Development Bank and Inter-American Development Bank have standalone safeguards policies. The World Bank has acknowledged the challenges it faces in implementing this policy in Africa. The Inter-American Development Bank has established a Social Investment Funds and put in place mechanisms to increase access to financial resources by Indigenous Peoples and other vulnerable communities.

Different perspectives on the Bank adopting a stand-alone policy

Some Bank stakeholders supporting the efforts of the Indigenous Peoples' groups, through the Indigenous Peoples of Africa Coordinating Committee (IPACC) support the notion that the Bank should have a standalone Policy or include an operational safeguard (OS) on Indigenous Peoples in the Integrated Safeguards System (ISS). Before the approval of the Bank's ISS in 2013, some members of the Bank's Board of Directors expressed their support for this request. They noted that a specific OS on Indigenous Peoples would enable affected groups to clearly formulate their requests for redress by the Banks Independent Review Mechanism; permit the Bank to address some of the salient concepts fundamental in the participation of Indigenous Peoples in development

projects in Africa, such as the free, prior and informed consent which is currently not addressed in the ISS. It is also alleged that the Bank's treatment of Indigenous Peoples by incorporating them into the broader category of 'vulnerable groups as is in the ISS, amounts to a denial of what it means to be indigenous in terms of their particular and special attachment to traditional land and their right to self-identification and to self-determination.

However there are others vehemently opposed to the notion of a standalone policy for Indigenous People. Lessons from Regional Consultations on the ISS and the Indigenous Peoples Forum show that many Bank stakeholders particularly those who represented RMCs expressed concerns on the sensitivity of Indigenous Peoples' issues and its politically divisive nature. Several participants suggested that instead of a standalone policy, Indigenous Peoples should be treated as a category of vulnerable people arguing that African countries have distinct and varying vulnerable groups and therefore preparing a stand-alone policy on one vulnerable group over-emphasizes the issue of Indigenous People and is a misplacement of the Banks priorities to promote inclusive growth. It was argued by some countries that they do not have any special Indigenous Peoples in their countries, as all their citizens are indigenous. Encountering such positions can complicate the operationalization of an IP specific policy if the Bank developed one

Recommendations

Given its mandate related to Africa's sustainable development, the Bank needs to account for ecological implications and their impacts on social conditions and livelihoods of populations. The Bank should therefore continue to address social and human development issues related to the implementation of its safeguards policies and procedures which have been designed to ensure sustainable development.

The section below examines the available options that the African Development Bank can choose from while dealing with Indigenous People issues in its operations. The options were examined in cognizant of the fact that the Bank recognizes and respects the sovereignty of its member countries, including national legislation and policies relating to Indigenous Peoples, and at the same time, the Bank takes into account its responsibility of ensuring equality of opportunity for all people, and that its operations and assistance to regional member countries (RMCs) do not negatively affect the welfare and interests of all, Indigenous Peoples inclusive.

Option 1: Standalone Policy

Borrowing a leaf from other Development Banks, a standalone policy could be developed by the Bank, since the current instruments that deal with issues of vulnerable groups are subject to interpretation and may not be adequately utilized to address the unique nature of Indigenous People in Africa. It should also be emphasized that several participants, key informants, and focus group discussants believe that by developing and applying a stand-alone policy on IPs, the Bank would address many of the shortcomings of the ISS. Proponents believe that such a policy would:

- Promote the Bank's overriding objective of poverty reduction and inclusive and equitable economic growth and social well-being in RMCs.
- Ensure that the negative impacts of AfDB's engagement and the projects it supports are

avoided or limited to the maximum extent possible and do not fall disproportionately on certain marginalized vulnerable groups.

- Ensure that the benefits that accrue from those projects reach the affected communities so that they can share the development benefits (such as roads, schools, and health care facilities).
- Permit the Bank to address some of the salient concepts that are fundamental to development projects in Africa—such as free, prior, and informed consent—and to efficiently handle questions surrounding the displacement and resettlement of and compensation for IPs.
- Empower IPs and their future generations to break the social, legal, political and economic barriers that have kept their communities from the benefits of development and transformation taking place in Africa.
- Bring the Bank on par with international norms and standards and into compliance with international laws, conventions and treaties.

The IP safeguard policy would apply to all Bank lending operations, both public and private sector, and to project activities funded through other financial instruments managed by the Bank. In appraising projects and programmes with possible consequences to IPs, the Bank would have to ensure significant participation of key staff, including mid- and high-level AfDB managers and the country office staff who would ultimately be responsible for monitoring implementation of the policy.

The downers to the Bank adopting a standalone policy on Indigenous Peoples are the following;

- It would be a very complex process considering that the issue of IPs is very controversial in Africa
- The lack of legislation and national recognition of Indigenous Peoples in most African states would make the process of developing and applying the policy difficult if not impossible;
- Going ahead to have a standalone policy, an issue that has been vehemently opposed by the majority of the RMCs will be detrimental to the Banks relationship with its shareholders;
- The African continent has a several groups who can be categorized as vulnerable or marginalized due to historical, social, economic or political reasons. Amplifying one group could be considered

discriminatory and could possibly generate social conflict. It could also lead to agitations by other groups for stand-alone policies for their protection.

Option 2: Revision of the relevant existing Bank Policies and Operational Guidelines to include provisions on Indigenous Peoples' issues

The Bank can take a conscious effort to revise not only the ISS but all its operational guideline documents to align with international best practices for example the provisions of the Global Environment Facility and other MFIs to further beef up support to Indigenous Peoples, as identified by the various states. If such a step is taken it would put the Bank at the level or close to the level of its peer organizations and of course ensure that for example the Bank meets the requirement to remain an implementing Agency of the Facility and further collaborations with similar agencies

The Bank can consider to include an explicit clause in the Operational Safeguard on involuntary Resettlement to address the issue of Prior Free Informed Consent (PFIC) since the Indigenous Peoples' right to free, prior and informed consent (FPIC) has been recognized by a number of intergovernmental organizations, international bodies, conventions and international human rights law in varying degrees.

The Bank would need to develop a Guidance Note on Free, Prior, and Informed Consent (FPIC) clarifying the issues related to the rights of local communities, particularly Indigenous Peoples, to participate in decision making about issues affecting them.

Of course if the Bank adopted the PFIC clause, it would mean that the involuntary displacement and resettlement of Indigenous Peoples should not take place without the free and informed consent of the respective Indigenous Peoples, and, when such resettlement takes place, it should be ensured that just compensation is paid, with the option to return when feasible.

The Bank can also revise its OS2 to include another clause that, would obligate its member states to protect against displacement of Indigenous People, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands”.

The pitfall for option 2 is that the Bank has already approved the ISS and revision of the Banks policies and operational guidelines is an expensive and cumbersome affair and cannot be envisaged to happen in the near future.

Also as in the case above (option 1) the lack of legislation and national recognition of Indigenous Peoples in most African states would make the process of enforcing the application of the proposed clauses very difficult. Failure to comply could lead to complaints filed with the Banks Independent Review Mechanisms and delays in implementing projects, which may in turn lead to indirect and direct costs and encumbrances to the projects and its beneficiaries.

Option 3: Adoption of a Development Approach to addressing Issues of Indigenous Peoples

A key recommendation from the Indigenous Peoples' Forum is that the Bank should deliberately design and promote development programs that target Indigenous Peoples, beyond safeguards. This could be in the form of a separate development program targeting Indigenous Peoples or through an Indigenous Community Development Plan that should be prepared for projects that have clear risks for Indigenous Peoples. The Bank could also consider establishing a Social

Investment Programme in its Human Development Department (OSHD) as a vehicle to target the rural poor and marginalized communities, or more especially Indigenous Peoples as recognized by the respective states. Specifically targeting the socio-economic development of the Indigenous People would reduce their vulnerability to violent conflict, climate change, and land dispossession, uneven distribution of resources, exclusion, marginalization, and exploitation. Embracing affirmative action in form of establishing development programs for marginalized can provide the Bank with a means of making a moral commitment to the ideal of justice or equal treatment for all.

One major disadvantage of this form of affirmative action is the reality or perception of reverse discrimination. While reverse discrimination could be considered exceedingly rare in such a development practice, the accusation of reverse discrimination (against mainstream populations) can generate a negative backlash for the Bank, which may undermine its relationship with its RMCs considering that the Bank cannot implement any development program, be it funded as a loan or a grant without the involvement of the concerned RMCs.

Conclusion

From the foregoing, it is important for the Bank and its staff to have a common understanding of IPs, have a clear definition and recognition of Indigenous People from an African perspective. On one hand, it is evident that for an institution like the African Development Bank, numerous challenges especially of how to target the differentiated approach of its development interventions on the African continent and singling out the Indigenous People may arise and on the other hand, as the Bank undertakes development programmes on the continent., with its internal institutional redress mechanisms like the IRM accessible to the public, it's inevitable that the issue of IPs will crop up from time to time. Therefore, the Bank needs to take a bold step in addressing the issue of Indigenous People. Under the circumstances, the Bank pronouncing itself on the issue of Indigenous People on the African continent is a long overdue.

Also important to note is the fact that the borrowing governments and private sector project sponsors are likely to view the Bank's adoption of a binding IP policy or stringent requirements in its Operational Safeguards as yet another cumbersome requirement to meet, and they may resist carrying out their part of the policy requirements, especially if the requirements contradict their national

laws and regulations. Thus borrowers may even decline AfDB loans, choosing to seek financing elsewhere rather than comply with strict AfDB safeguard requirements. There may also be some resistance from Bank field staff because enforcing a stand-alone IP policy is a difficult, complex and sensitive undertaking. Such a policy or OS requirements may also create disagreement and conflict with host country government agencies. The Bank must carefully consider these issues before deciding to enact a stand-alone IP policy. At the moment the most viable option is for the Bank to consider a Development Approach to addressing Issues of Indigenous Peoples as elaborated in 4.1.5 above.

It is hoped that the issues of Indigenous People as articulated in the report will give very constructive input to discussions within the African Development Bank on how to directly mainstream the concerns of the groups recognized by the AU in the Banks safeguards policies and its overall development agenda. The Bank can leverage its position on the African continent and its association with the AU in dealing with multicultural African states in which the voices and perceptions of all groups are respected. If allowed to flourish and develop on their own terms, Indigenous Peoples and other marginalized communities in Africa have

important contributions to make to the overall economic, political, social and cultural development of the states within which they live and the continent as a whole. They

should be seen as an asset and, if the political will exists, it would be completely feasible to develop policies that give space and opportunities to all groups within a state.



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