

**ACHPR/Res.301 (EXT.OS/XVII) 2015: Resolution on the World Bank's
draft Environmental and Social Policy (ESP) and associated
Environmental and Social Standard (ESS)**

The African Commission on Human and Peoples' Rights (the Commission), meeting at its 17th Extraordinary Session held from 19 to 28 February 2014 in Banjul, The Gambia:

Recalling its mandate to promote and protect human and peoples' rights under the African Charter on Human and Peoples' Rights (the African Charter);

Considering Article 21 of the African Charter, which recognizes that all peoples shall freely dispose of their wealth and natural resources, a right that shall be exercised in the exclusive interest of the people and shall not be denied under any circumstances;

Considering further Article 22 of the African Charter, which guarantees peoples right to their economic, social and cultural development and States' duty to ensure the exercise of the right to development;

Recalling its Resolution ACHPR/Res.65(XXXIV)/03 on the adoption of the "Report of the Working Group on Indigenous Populations/Communities" adopted at its 34th Ordinary Session held from 6 to 20 November 2003 in Banjul, The Gambia;

Recognizing the positive advance in recent years in the promotion and protection of indigenous populations in several African countries both at the normative level and with regard to the development of relevant plans, policies and programmes;

Recalling the United Nations Declaration on the Rights of Indigenous Peoples adopted in 2007 and reaffirming the African Commission's commitment to foster the principles enshrined in this Declaration by African States;

Noting with appreciation the endorsement by African States of the Outcome Document of the World Conference on Indigenous Peoples' that was adopted by the UN General Assembly on 23 September 2014 in New York;

Noting the proposed Environmental and Social Safeguard Policy (ESP) and associated Environmental and Social Standards (ESS) of the World Bank released for public consultation on 30 July 2014, and in particular, Environmental and Social Standard 7 (ESS7) on Indigenous Peoples;

Further noting the objective of ESS7 wherein the World Bank acknowledges that the purpose of the policy provisions is to “ensure that the development process fosters full respect for the human rights, dignity, aspirations, identity, culture, and natural resource- based livelihoods of Indigenous Peoples”;

Concerned however that ESS7, in paragraph 9, provides governments with the possibility of opting out of applying ESS7 in its entirety where a project is judged to potentially “create a serious risk of exacerbating ethnic tension or civil strife; or where the identification of culturally-distinct groups as envisioned in this ESS is inconsistent with the provisions of the national constitution”;

Further concerned that opting out of ESS7, for countries choosing to do so, would have the effect of removing all the safeguard obligations designed to protect the fundamental human rights of indigenous peoples provided therein;

Concerned that the opt-out option would encourage States not to comply with their international and regional obligations and commitments, and discourage the evolving State practice for the enhanced protection of indigenous peoples in Africa.

Further concerned that the ‘opt-out’ option would infringe the African Union Vision 2063 adopted by the Heads of States and Government, which calls for ‘a prosperous Africa based on inclusive growth and sustainable development’;

Encouraged by the constructive discussion that the Working Group on Indigenous Populations/Communities had on 6 February 2015 with the World Bank Safeguards Review Team at the Headquarters of the Institution, where the Working Group highlighted its concerns with regard to the potential negative impact of the opt-out option on the legal recognition of indigenous peoples in Africa and the promotion and protection of their rights;

The Commission:

Calls on the World Bank to align its Environmental and Social Safeguards Policy and associated Environmental and Social Standards (ESS) with international and regional legal frameworks for the protection of indigenous peoples;

Urges the World Bank to undertake the revision of the safeguards policy by removing the ‘opt-out’ clause included in Environmental and Social Standard 7 (ESS7) and consult all stakeholders, including the indigenous communities and the African Commission on Human and Peoples’ Rights in the entire revision process;

Further urges the World Bank to ensure that the revised safeguard policy contribute to supporting the development of a relevant legal framework for the indigenous peoples in Africa;

Calls on the States Parties to support the revision of proposed Environmental and Social Standard 7 (ESS7) to fully reflect the realization of the rights and duties guaranteed by the African Charter and other relevant regional and international legal instruments;

Encourages States Parties to adopt legislative and other measures to protect the rights of indigenous peoples and to develop and strengthen positive action measures in their favour;

Urges international organizations to further promote human rights on the continent and abstain from taking initiatives that could have a negative impact on policies for the promotion and protection of the rights of indigenous peoples in particular.

Done in Banjul, The Gambia on 28 February 2015