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CONSULTATION MEETING ON THE USAID DRAFT POLICY ON INDIGENOUS PEOPLES' ISSUES

SUMMARY OF PARTICIPANT PERSPECTIVES

INTEGRATED LAND AND RESOURCE GOVERNANCE PROGRAM, UNDER THE STRENGTHENING TENURE AND RESOURCE RIGHTS II (STARR II) IDIQ

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NOVEMBER 2018

This document was produced for review by the United States Agency for International Development. It was prepared with support from the Integrated Land and Resource Governance Task Order, under the Strengthening Tenure and Resource Rights II (STARR II) IDIQ. It was prepared by Tetra Tech.

Cover Photo: Participants at the consultation meeting on the USAID Draft Policy on Indigenous Peoples' Issues in November 2018 in Washington, DC. Nicholas Tagliarino/Tetra Tech.

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Suggested Citation: Sanjak, J., & Tagliarino, N. (2018). *Consultation Meeting on the USAID Draft Policy on Indigenous Peoples' Issues: Summary of Participant Perspectives*. Washington, DC: USAID Integrated Land and Resource Governance Task Order under the Strengthening Tenure and Resource Rights II (STARR II) IDIQ.

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INTEGRATED LAND AND RESOURCE GOVERNANCE TASK ORDER UNDER THE STRENGTHENING TENURE AND RESOURCE RIGHTS II (STARR II) IDIQ

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LIST OF ACRONYMS

CDCS	Country Development Cooperation Strategy
EIA	Environmental Impact Assessment
ESS	World Bank Environmental and Social Standards
FPIC	Free, Prior and Informed Consent
IDA	Inclusive Development Analysis
IDIQ	Indefinite Delivery/Indefinite Quantity
ILO	International Labour Organization
ILRG	Integrated Land and Resource Governance
INGO	International Non-Governmental Organization
NGO	Non-Governmental Organization
OU	Operating Unit
SIA	Social Impact Assessment
STARR II	Strengthening Tenure and Resource Rights II
UNDRIP	Universal Declaration on the Rights of Indigenous Peoples
US	United States
USAID	United States Agency for International Development

I.0 INTRODUCTION

The United States Agency for International Development (USAID) is developing a policy to guide its engagement with indigenous peoples. USAID recognizes that indigenous peoples contribute to global development and have a crucial role to play in achieving the agency's objectives. The policy will guide USAID's efforts to include indigenous peoples as partners in its development programming. USAID aims to ensure that every USAID activity that impacts the lives, territories, resources, and/or livelihoods of indigenous peoples engages them directly to ensure that their communities benefit, their rights are respected, and they can practice self-determined development.

On October 23, 2018, USAID released a consultation Draft USAID Policy on Indigenous Peoples' Issues (hereinafter the "draft policy"). To gain feedback on the draft policy, USAID posted the draft policy on its website for general public comment between October 23 and November 9th, 2018. USAID also hosted a two-day consultation meeting with indigenous peoples' representatives and international non-governmental organizations (INGOs) on November 14 – 15, 2018 in Washington DC. The consultation meeting was facilitated by the Integrated Land and Resource Governance (ILRG) Program, a USAID program implemented by Tetra Tech. ILRG is a task order under the Strengthening Tenure and Resource Rights II (STARR II) Indefinite Delivery/Indefinite Quantity (IDIQ) contract supported by the USAID Land and Urban Office.

Indigenous peoples' representatives from the following countries attended the consultation meeting: Bangladesh, Botswana, Burkina Faso, Democratic Republic of the Congo, Ecuador, Guatemala, Guyana, Indonesia, Kenya, Nicaragua, Panama, Paraguay, and Peru. Some representatives of INGOs that work closely with indigenous peoples, the United States Environmental Protection Agency, and USAID also participated. A total of 46 people attended the consultation meeting. Of these, there were 18 indigenous peoples' representatives, 13 INGO representatives, one independent consultant, eight United States (US) government representatives, and six Tetra Tech representatives.

An online platform was also made available for invited persons to contribute written comments on the draft policy both before and after the consultation meeting. Eight participants submitted comments before the November 9 deadline. Following the consultation meeting, participants were given a few additional days (until November 20) to submit additional written comments. Two more participants submitted comments by November 20.

The consultation meeting consisted of two main elements of discussion:

- a) Sessions for USAID to present the draft policy and its key components with time for participants to ask clarifying questions; and
- b) Sessions for indigenous peoples' and INGO representatives to discuss the elements of the draft policy and express their views.

This report is an output of the consultation meeting and the written input from its participants. It provides a summary of the perspectives and recommendations as expressed at the consultation meeting and as provided on the online platform in writing. This report will be provided to all invited participants, and made available in English, French, and Spanish, in the spirit of the shared dialogue and conversations that took place during the consultation meeting. This report will also be used by USAID as it produces the final version of its new Policy on Indigenous Peoples' Issues. As a summary, the report does not relay all comments made or all the details and background provided by participants. This report complements USAID's own notes on the conversations that took place during the consultation meeting as well as their reading of the written comments submitted via the online platform.

2.0 BRIEF SYNOPSIS OF THE DRAFT POLICY

To provide context for the participant perspectives, a brief synopsis of the draft policy is included in this section. Through this draft policy, USAID aims to “improve the impact and sustainability of USAID programs by ensuring that USAID staff and implementing partners respect indigenous peoples’ rights and engage indigenous peoples as authentic partners in development processes.”¹

The draft policy has three objectives. The first objective calls on USAID to strengthen engagement with indigenous peoples so that its programs and indigenous peoples’ priorities are aligned and yield positive outcomes. The second objective calls for indigenous peoples’ issues to be part of the work of all USAID sectors and for USAID to apply cross-sectoral development approaches in its work. The third objective calls on USAID to empower indigenous peoples so that they are better able to exercise their rights, participate in decision-making processes, and practice self-determined development.

To facilitate meeting these objectives, the draft policy includes operating principles guiding missions to identify indigenous peoples in the area of impact of a proposed activity, carry out analyses to understand the relevant indigenous peoples’ issues, engage with indigenous peoples, and safeguard their rights and well-being across the full program cycle. A final principle stresses partnership with indigenous peoples, recognizing local communities and their leaders as vital to the journey to self-reliance and new USAID tools and methods like co-creation of activity designs.

In addition to laying out objectives and principles for the USAID’s work with indigenous peoples, the policy aims “to assist operating units (OUs) in applying the Policy’s guidance by illustrating how the principles, tools, and resources discussed can be applied at each stage of the Program Cycle.”²

The draft policy highlights several tools that will be designed for the purpose of operationalizing the draft policy’s operating principles. These include a consultation handbook; an annotated inclusive development analysis (IDA); and social impact assessment (SIA) guidance. These tools are still under development and are designed to assist OUs in ensuring that USAID activities do no harm while building partnership with indigenous leaders and community members.

¹ USAID (2018), p. 1.

² USAID (2018), p. 2.

3.0 OVERVIEW OF PERSPECTIVES

In this section, participants' overarching comments on the draft policy's strengths and areas of concern are highlighted to provide an overview of their reactions. This section also provides a list of top recommendations by regional groups made during a break out session. The break out session allowed participants to meet in smaller, geographically organized groups to develop shared priority recommendations to USAID. More detailed and complete feedback from participants is summarized in section 4.

3.1 MAIN STRENGTHS OF THE DRAFT POLICY

Representatives from the indigenous peoples' organizations and INGOs involved in the consultation meeting expressed support for USAID's effort to establish this draft policy. It is important both from the perspective of improving USAID program outcomes (e.g., protecting the environment), and from the perspective of reducing losses to indigenous peoples. Even though participants had a number of recommendations for revising the draft policy to improve its effectiveness, they acknowledged

"I appreciate the thinking by USAID to make this progressive commitment that addresses human rights and existing challenges confronting indigenous populations globally."

- Michael Tiampati, Pastoralist
Development Network of Kenya

that this draft policy is a very important and positive step for USAID. It considers cultural, political, and economic issues and legal and social realities that are important to the participants. Participants saw the consultation process as an opportunity to help improve upon the draft. Moreover, several participants saw the consultative process and the draft policy as an opportunity for USAID to begin to strengthen engagement with indigenous peoples as partners; improve collaboration, communication, and information-sharing; and ensure that indigenous peoples' rights are acknowledged and respected by USAID and its implementing partners. Several of the indigenous peoples groups represented have, for a long a time, struggled to achieve government recognition as "indigenous"; these representatives were pleased to see the draft policy include provisions recognizing a broad range of groups as indigenous peoples (based on the criteria established in the draft policy), for the purpose of USAID programming and regardless of whether or not indigenous peoples are legally recognized by national governments.

3.2 MAIN CONCERNS ABOUT THE DRAFT POLICY

During the consultation meeting, participants gave constructive feedback and specific comments on the various objectives, principles, tools, and other parts of the draft policy. As a general comment, participants stated they would have liked to be consulted earlier and more often. They also believed that more clarity and, potentially, additional provisions should be included to ensure the final version of the policy effectively promotes meaningful engagement, empowerment, and participation of indigenous peoples. These terms and others like "partnership" were flagged as potentially ambiguous or confusing, especially when the policy is translated into other languages. Participants called for USAID to use simple and easy to understand wording in the policy. These terms were also discussed in connection with related concerns such as the inability of USAID to channel funds directly to indigenous peoples' organizations (indigenous peoples governance units or non-governmental organizations [NGOs], for example, could be project implementing partners) and about meaningful consultation and the application of Free, Prior and Informed Consent (FPIC). A key question raised is how the policy will be effective in practice with no mandatory provisions or requirements. Along the same lines, concern was raised about identifying suitable indicators for monitoring implementation and impacts and clarifying channels for

addressing issues that might arise when there is no grievance mechanism proposed. Finally, participants questioned the sufficiency of content on inclusivity, specifically as it relates to women and youth.

Overall, the participants praised USAID for its endeavor to establish a policy on indigenous peoples' issues and were enthusiastic about the draft policy and the consultation meeting. To help USAID in revising the draft policy, participants offered examples and lessons learned from their diverse experiences working with USAID and other donors. Through highlighting challenges indigenous peoples face across Africa, Asia, and Latin America, participants brought to life the need for the policy. For example, participants spoke about the challenges associated with influencing governments to recognize indigenous peoples' rights, particularly land and human rights. They relayed how poverty, malnutrition, loss of land and resource access, and other challenges were long-standing problems for indigenous peoples. One example was shared in which a USAID project drilled boreholes and indigenous peoples were not given opportunities to drink from those boreholes. Participants expressed their hope that USAID would improve the draft policy by effectively using the inputs and insights gained during the consultation meeting and the related written inputs. They expressed a strong commitment to supporting the improvement of the draft policy and monitoring its implementation on the ground, noting the importance that USAID continue to coordinate with indigenous peoples in order to give the policy more legitimacy.

One participant offered the following as key challenges affecting indigenous peoples:

1. Exploitation of natural resources by companies;
2. Justice systems that do not recognize indigenous peoples rights or traditional authorities;
3. Social conflicts in strategic areas where indigenous peoples are located; and
4. Limited social services and development benefits.

3.3 REGIONAL RECOMMENDATIONS FOR IMPROVING THE DRAFT POLICY

On the second day of the consultation meeting, participants were asked to break into smaller groups and come up with a list of shared, high priority recommendations for improving the draft policy. Participants elected to organize themselves into the following small groups: representatives from Latin American countries; representatives from African countries; representatives from Asian countries; and representatives from INGOs. Table I below presents the key recommendations. In addition, the groups also offered a sense of the positive elements they saw in the draft policy, such as its emphasis on building partnership that pave the way for more direct and equitable engagement between USAID and the communities involved in or affected by USAID-funded projects.

TABLE I. PRIORITY RECOMMENDATIONS FROM PARTICIPANT SMALL GROUPS

REGIONAL GROUP	RECOMMENDATION
LATIN AMERICA	1. There should be an indigenous interlocutor for communities within embassies or missions as a bridge to ensure better engagement. Especially once the policy is adopted, there should be a focal point to assure progress with its implementation.
	2. The policy should include clear provisions that address the legal framework regarding indigenous rights, including rights established in the International Labour Organization (ILO) Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and other international instruments.
	3. The policy should clarify the subject of FPIC so that the consultation process will be satisfactory to indigenous groups and yield results.
	4. The policy should make clear the specifics related to safeguards for indigenous peoples.
	5. USAID should work on the wording around assumptions of a shared model of development. In some paragraphs, it appears the assumption is that indigenous peoples share USAID’s model of development. That is not always the case.
	6. USAID should make it clear who will be involved in implementation of the policy – within USAID, the country government, and indigenous peoples. The policy should clarify the responsibilities of implementing partners and executing agencies as well as of indigenous peoples.
	7. The policy should take a holistic approach and include a clear recognition of indigenous rights to land and resources.
	8. USAID should make information available on the webpage as well as at USAID offices. There should be an information campaign to raise awareness about the policy in the territories.
	9. If the policy’s aim is to improve the participation of indigenous peoples in USAID projects and strengthen engagement with indigenous peoples, USAID should work with indigenous peoples and not with big INGOs (e.g., in relation to protected area management).
	10. The policy should help strengthen the rule of law and provide opportunities that will enable indigenous peoples to exercise their rights. ³ The policy should contextualize its objectives within the rights of indigenous peoples.
	11. The policy should promote transparency, ensuring indigenous peoples are aware of USAID activities and can effectively monitor compliance with the policy.
AFRICA	1. Indigenous peoples’ organizations should play a role in identifying indigenous peoples in a country, to counter situations when governments have been said to claim they know who is and who is not indigenous.
	2. The draft policy should cite international standards, including the standards set by UNDRIP, ILO Convention 169, and African Court on Human and Peoples’ Rights, among others. It should better articulate the mandates from these international standards to reinforce its view to protect and promote indigenous peoples development.
	3. USAID should commit to strengthening indigenous peoples’ organizations to carry out their new roles.

³ Participants noted that national laws often do not recognize indigenous peoples’ rights and at the same time, there is often an absence of government in indigenous peoples. These factors contribute to an environment of illegality.

	4. USAID should explain in the policy how it intends to partner with indigenous peoples. USAID should have an indigenous focal point in the country or mission.
	5. The policy should include stronger language on gender and youth.
	6. The policy should support legal advocacy initiatives so that indigenous peoples are better able to challenge gross violations of their rights.
	7. The policy should refer to the need to protect cultural heritage and knowledge, safeguarding against theft.
	8. The policy should take steps to ensure that the land and resources of indigenous peoples (e.g. pastures, water, livestock) are respected, ensuring that indigenous peoples can maintain an adequate standard of living.
	9. The policy must apply to all the agents of USAID. It should establish clear provisions on how it intends to operate in various countries, including countries that historically have not respected indigenous peoples. Otherwise, there is a risk that the policy will be “put away in a drawer” and not operationalized on the ground.
	10. To ensure effective implementation, the policy should promote multi-stakeholder alliances and build cross-cultural linkages between indigenous peoples. The policy should promote collaboration and communication so that indigenous peoples have opportunities to come together and share experiences.
ASIA AND THE PACIFIC	1. A revised version of the policy should be circulated for comments, integrating all the discussions that took place during the consultation meeting.
	2. Once the policy is approved, USAID should conduct an information dissemination campaign tailored for USAID staff and indigenous peoples in countries where USAID works.
	3. Operational guidelines for implementing the policy should be published as well. USAID should facilitate regional-level consultations. These consultations can inform the guideline development process, ensuring guidelines are improved and updated over time.
	4. Capacity-building materials should be co-developed with indigenous peoples.
	5. It may also be worthwhile to form indigenous peoples advisory groups to promote indigenous peoples interests within USAID programming.
GLOBAL (INGOs)	1. The policy should address the issues related to FPIC, grievance mechanisms, and capacity-building raised during the consultation. A revised version of the policy should be circulated for comments, integrating all the discussion that took place during the consultation.
	2. Indigenous women should be more explicitly addressed.
	3. Having an indigenous peoples advisor in country or regional missions is a best practice.
	4. There should be dialogue with indigenous peoples on the sectoral guidance.
	5. USAID should use its convening power to bring governments and other stakeholders together more often to discuss issues affecting indigenous peoples.
	6. To the extent that the policy can specify the language that will be put into contracts and procurements, ⁴ this would help ensure project implementers comply with the policy.

⁴ This wording reflects the language used by the participants; however, we suggest that USAID interpret comments about “contracts” to also apply to grants and cooperative agreements and that where participants referenced “contractors,” it should be interpreted to mean all USAID implementing partners.

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| 7. The policy should encourage SIAs and other impact analyses to be conducted at the mission level and specify requirements for public disclosure for transparency, accountability, and learning. USAID should ensure compliance with the policy is monitored and learning is advanced. |
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4.0 DETAILED SUMMARY OF PARTICIPANT PERSPECTIVES

This section of the report provides a more detailed summary of the perspectives shared by participants, both verbally and in writing. The input and perspectives are organized into subsections according to the structure of the meeting agenda. Participant inputs are further organized according to core topics to better guide the areas of emphasis within each subsection. These core topics are policy development; policy framing; motivating policy implementation and monitoring results; the nature of engagement and partnership; the nature of consultation; resources and capacity-building; women and vulnerable groups; the policy in relation to international standards; grievance mechanisms; and, communication and knowledge sharing. It should be noted that FPIC could also be seen as a core topic. However, concerns related to FPIC were expressed in almost every session in different ways. FPIC is mentioned under several of the broader core topics; the table below relays of all the concerns raised on FPIC, summarized in one list for easy reference.

TABLE 2. SUMMARY OF COMMENTS ON FPIC

SUMMARY OF PARTICIPANT COMMENTS ON FPIC

- Participants noted the draft policy’s statement that “the US does not interpret FPIC as a veto right” as problematic.⁵ Without the ability to either accept or refuse a proposed development project on their territory, communities’ interests and well-being will be inevitably harmed and inadequately safeguarded. The policy should remove all references to FPIC as not entailing a veto.
- The draft policy should strengthen the language around “consent,” making reference to the legal risks of moving forward without a community’s consent and international human rights guidance regarding the application of consent.
- FPIC is a right and not simply a process. FPIC is not limited to consent but includes rejection. It is participation in decision-making processes that impact on indigenous peoples. More importantly, it is an exercise of the right to self-determination.
- FPIC should be defined as part of the draft policy’s co-creation principle.

4.1 USAID’S APPROACH TO THE DRAFT POLICY

This section summarizes participant input to presentations on relevant background about USAID, its general approach to policy development, and its approach to the draft policy. The conversation about USAID’s approach focused on three of the core topics: policy development; policy framing; and motivating policy implementation and monitoring results.

4.1.1 POLICY DEVELOPMENT

While participants expressed that their participation in the consultation meeting provided an opportunity to give meaningful written and verbal input, they also pointed out that the consultation process could have been more robust. For example, consultation much earlier in the process with time for broader indigenous peoples engagement (e.g., through regional consultations) would have encouraged a more inclusive approach. Also, additional opportunities to give feedback on a revised draft

⁵ USAID (2018), p.2.

policy, before the policy is finalized and adopted, would be best practice and ensure that the policy incorporated indigenous peoples' perspectives in a meaningful way.

4.1.2 POLICY FRAMING

USAID should avoid the policy perpetuating the mindset of considering indigenous peoples as “beneficiaries” of its programs. Instead, participants want the policy to recognize indigenous peoples as actors with the right to direct and active participation. Participants stated that USAID should adopt an approach that relies on active participation of indigenous peoples throughout the policy development and implementation process. It was noted that many indigenous peoples' interactions with USAID and other donor agencies have been done through middlemen. For active participation, mechanisms are needed that ensure inclusion and knowledge exchange.

Participants noted that USAID should keep in mind that the terms “engagement” and “empower” may be difficult to translate across a variety of languages and cultures. Participants similarly stressed differences in the ways in which Western practitioners understand development (e.g., what constitutes progress in terms of health and education). Participants found that, in some paragraphs, the draft policy appears to imply that USAID is assuming its development objectives align with those of indigenous peoples. They suggested a need to better recognize that indigenous peoples have their own definitions, visions for development, and traditional knowledge systems that need to be understood. Suggestions were made that indigenous peoples participation in the policy implementation would be enhanced if reference to intercultural approaches to development was made in order to overcome stereotypes and assumptions. Intercultural dialogue would help ensure a shared understanding of policy-related processes.

One participant from Latin America stated that poverty is a major issue affecting indigenous peoples in their country. Indigenous peoples often face oppression, exclusion, classism, and racism. The erosion of ancestral authorities, customary norms, and traditional practices was also highlighted as a pervasive issue.

While participants favor the strong language about avoiding harm from USAID projects, they thought the draft policy did not sufficiently balance its emphasis on “do no harm” with its ambitions of ensuring effective indigenous peoples engagement as true partners in development and providing greater opportunities for indigenous peoples to make progress on their development priorities.

Several participants asked that the policy acknowledge the impact that extractive industries and related development projects have on the livelihoods of indigenous peoples. A call for stronger, explicit language about the need for recognition and protection of land and resource rights was accordingly made. Some asked that the policy include additional content that recognizes the unique, crucial role that indigenous peoples play as stewards of the environment. To illustrate why these points matter, several representatives of pastoralist networks in sub-Saharan Africa discussed how certain development projects and extractive activities have violated the land and resource rights of indigenous pastoralists. Additionally, participants urged USAID to incorporate mechanisms to ensure states comply with human rights, environmental rights, and other rights held by indigenous peoples. Participants stressed indigenous peoples as rights holders and not just project stakeholders and called for reference to the importance of due diligence much earlier on in the policy document.

Some of the above comments regarding policy framing were also made in the written submissions, which also covered additional topics. One participant from Asia made it clear via written comment that peace and security issues, including the militarization of indigenous peoples' territories, need to be addressed in the policy. The policy also does not indicate how the US will work with governments engaged in counter-terrorism measures. Such measures have had a direct impact on indigenous peoples in many countries. Another participant highlighted how governments often use “public safety” and

“national security” as pretexts for either not respecting indigenous rights or refusing to fulfill their commitments made to indigenous groups. The reality that indigenous peoples’ territories often overlap with protected areas and areas where illicit actors/activities are present needs to be considered more in USAID programming.

The written comments related to policy framing drew attention to additional issues arising from the acquisition and exploitation of indigenous peoples’ land and natural resources by outside actors. Some commenters suggested that environmental risks and climate change are largely due to unregulated and destructive operations of extractives, energy, agri-business, commercial plantations, and other land conversion schemes conducted for profit, including by US companies. FPIC came up in the written comments as relevant to addressing these risks associated with the acquisition and exploitation of indigenous peoples’ land. One comment stated that the right to give consent necessarily depends on the ability to withhold consent or to refuse an offer. Without the ability to either accept or reject a proposed development project on their territory, indigenous peoples’ interests and well-being will be inevitably harmed and inadequately safeguarded. Indigenous peoples are best-positioned to evaluate whether a project will run counter to their ability to maintain their livelihoods, territorial environment, cultural practices, and identities. Moreover, it is impossible for any development actor to maintain a “partnership” with indigenous peoples if they do not have a right to refuse that partnership.

Another comment noted that, in describing the situations of indigenous peoples around the globe, the policy risks suggesting that indigenous peoples are homogeneous. The policy framing should be clear that, while problems may be summarized generically, the diversity of indigenous peoples and of the particular situations facing them requires differentiated understanding of each situation and differentiated program approaches.

4.1.3 MOTIVATING POLICY IMPLEMENTATION AND MONITORING RESULTS

Participants believed that USAID should put measures in place to ensure that the policy’s provisions would be complied with. A question was asked about whether USAID would develop a set of indicators that could be used to measure performance in implementing the policy. It was noted that if indicators will be used to measure compliance with the policy, then USAID should disaggregate data as much as possible to measure the policy’s impact on indigenous women and men. In response to these points, it was mentioned that USAID’s procurement process will likely involve the imposition of obligations on contractors to comply with the policy (e.g., provisions from the finalized policy would be included in USAID contracts). Nevertheless, some participants wanted to see the policy include more explanation of how compliance with and results from the policy would be measured.

The conversation on indicators led into a broader discussion of whether compliance with the policy would be mandatory or voluntary for USAID missions, staff, contractors, and others involved in project implementation. Many questions were raised for USAID to consider. Participants wanted to know how project implementers and those in charge of executing agencies would be held accountable for complying with the policy, especially in countries where indigenous rights are either not recognized or often violated. Participants wondered how USAID would work with governments that have historically ignored the interests of indigenous peoples. They also asked how USAID would empower indigenous peoples in contexts with little political will towards the policy content, and how the policy standards and safeguards will be applied in cases where projects are co-financed by USAID and other donors. Participants stated that in order for the policy to function effectively in a variety of contexts and circumstances, there needs to be deliberate efforts from USAID to adopt a holistic approach to safeguarding the rights and livelihoods of indigenous peoples. Participants emphasized that effective implementation of this type of policy will require monitoring, oversight, and accountability measures, including attention to the actions of governments and of implementing partners.

As mentioned in the discussion of policy framing, some participants brought attention to their experience with private, land-based investment that received some support from USAID. A recommendation was made that investors in such instances be asked to include benefit-sharing arrangements and follow key provisions in this policy, such as FPIC, and that USAID might consider funds that help indigenous peoples secure their land and natural resource rights as a preventative measure. They also asked whether FPIC would be written into implementing partner contracts, and, if so whether there would be emphasis on including indigenous women and other vulnerable groups in FPIC processes.

Some additional points related to the policy implementation were made. One participant asked whether USAID regularly does analytical work as part of the country development cooperation strategy (CDCS) process and whether organizations could be given opportunities to feed into these strategies. Others pointed out that while the policy's aim to empower indigenous peoples as development partners is important, there are constraints to indigenous peoples' participation in USAID projects – directly or through another implementing partner. There was a strong push for USAID to find ways to allocate funds directly to indigenous peoples and not always via big US organizations. This included strong requests for greater investment from USAID in initiatives aimed at building the capacity of indigenous peoples' organizations to manage USAID awards. Beyond the capacity that already exists or can be developed for award management, other practical constraints were mentioned with an eye toward the policy mentioning the need to address these types of factors. For example, banks are often not very accessible in the remote areas where indigenous peoples' territories are, and payments are made by check. More practical constraints are mentioned in section 4.2.2.

In addition to the above topics, written comments also addressed other areas. One written comment focused on how the policy should monitor environmental, social, and human rights impacts. This comment stated that, while the draft policy includes important references to EIAs and SIAs, it does not include important references to human rights impact assessments, which are based on international human rights standards as defined by national and international laws.

4.2 THE THREE OBJECTIVES OF THE POLICY

In the final session on the first day of the consultation meeting, USAID representatives discussed the three objectives established in the draft policy (noted above in section 2). They mentioned that policy objectives provide a high-level framework for implementing develop programs in indigenous peoples' areas. Following the presentation of the policy objectives, participants provided feedback and gave insight on their perspectives regarding the policy objectives. Several participants also submitted written comments that related to the policy objectives. The relevant verbal and written comments centered on three main topics: the nature and engagement of partnership between USAID and indigenous peoples; resources and capacity-building; and gender and vulnerable peoples.

4.2.1 THE NATURE OF ENGAGEMENT AND PARTNERSHIP

Participants noted that if USAID implementing partners work more directly with indigenous institutions (e.g., ancestral leaders), they will be more likely to be successful in achieving sustainable impact on the ground. It was emphasized that indigenous peoples have their own traditional governance structures, laws, and customs. Dealing directly with indigenous peoples' institutions will be key to USAID's success when working in indigenous peoples' regions. Moreover, USAID will be viewed more positively among indigenous communities. However, it was also noted that care is needed to understand the engagement and participation of indigenous peoples' traditional leadership structure, indigenous NGOs that work with the traditional governance structures, and also the individuals that comprise an indigenous community. One participant made it clear that there are key differences between indigenous peoples

that need to be considered by USAID missions and staff when designing and implementing programs. For instance, some development projects work with NGOs that have indigenous peoples on staff and serve as intermediaries between donors and indigenous peoples, while other projects work directly with ancestral authorities and indigenous communities that are institutionally separate. A suggestion was made that the policy should require USAID to acknowledge the diversity that exists across indigenous communities with respect to cultural practices, social dynamics, development priorities, and governance institutions.

Participants stated that specific efforts should be made to ensure equitable participation of women, youth, and other vulnerable individuals. The participants recommended that USAID encourage the adoption of flexible approaches to engagement that are tailored to specific contexts and take account of diversity.

Participants also stressed the need for the policy to reference how USAID will or should engage governments. The importance of building state capacities to recognize the rights of indigenous peoples, including land rights, was reiterated. The policy should adequately address and clarify the role of governments.

4.2.2 RESOURCES AND CAPACITY-BUILDING

One participant suggested that USAID include an objective aimed at increasing the institutional capacities of both indigenous peoples' organizations and USAID to ensure effective collaboration, partnership, and engagement. This suggestion captures a sentiment expressed by many participants. Without resources and further training, most indigenous peoples will not be well-positioned to benefit from the policy aspirations.

Several participants expressed frustration with USAID and other donors for providing funds to intermediary organizations (e.g., NGOs and consulting firms) as opposed to working more directly with indigenous peoples. For example, one participant stated that the policy should take into account the reality that many indigenous peoples have a "small piece of the pie" while most funding goes to large NGOs and contractors that have more "capacity" to manage development projects. In their experience, large NGOs often come to indigenous communities and ask them to be partners in development projects, but the large NGOs often do not reveal how much funding the communities will receive. In general, indigenous peoples' organizations have also been frustrated by a lack of transparency in the proposal development and funding processes.

Another participant noted that her organization couldn't receive funding because it did not have the proper legal status to serve as a contractor for USAID projects. Indigenous peoples' representatives also discussed how they have had difficulty accessing USAID funds because they do not have bank accounts, certifications, and other support structures in place to implement projects. According to several indigenous peoples' participants, USAID bidding processes have highly restrictive requirements and indigenous NGOs have a hard time fulfilling the requirements. Participants want to see the policy take these issues into account and strengthen indigenous institutional capacity to implement USAID projects as partners. They also wanted to see more due diligence by USAID, ensuring that large NGOs and contractors do not exploit or take advantage of indigenous groups. They also recommended that USAID should be aware that indigenous authorities may not always be working in the best interest of indigenous community members. Indigenous peoples' representatives also asked if USAID would allocate a percentage of funding for indigenous peoples' issues. They would like to see USAID set terms and conditions for funding that require project implementers to respect the policy, once adopted.

The written comments echoed some of the comments above and also provided additional feedback. One written comment noted that there is a key difference between empowering indigenous peoples and

developing indigenous peoples' capacities, and that the word "empower" can be interpreted in many different ways. This participant proposed including a fourth objective in the draft policy that aims to build the capacity of indigenous peoples' organizations while another person suggested weaving capacity-building into Objective 3. Participants expressed some dissatisfaction with indigenous peoples' capacity-building initiatives conducted in the past and wanted to see indigenous peoples capacity-building become more of a priority for USAID and other development agencies. According to another written comment, empowerment necessitates additional laws, resources, and dialogue between USAID and indigenous peoples.

One of the written comments stated that the policy should include additional language recognizing the indigenous right to execute development programs, noting that there is evidence that effectiveness, transparency, and sustainability can be achieved when indigenous beneficiaries are, at the same time, executors of development programs. Another written comment stated that there is a need to clarify and provide a solution in the conclusion section of the draft policy, so that indigenous peoples have the right to execute programs and their right to self-determination is respected.

4.2.3 GENDER AND VULNERABLE PEOPLES

There was some discussion and deliberation among participants on the issue of social inclusion. For example, one participant stated they thought the term "integration" as used in Objective 2 should be replaced with "inclusion" to ensure indigenous peoples' interests and priorities are included throughout all sectors. Another participant stated that, when development agencies use vague terms like "inclusive development" and "social inclusion," they often allow a lot of specific issues to be "swept under the rug." He noted that development agencies often fail to understand how to address issues and challenges that affect particular indigenous and other vulnerable groups separately. This participant concluded this comment by stating the overall impact and benefits of the policy and whether it promotes inclusion will largely depend on the relationship USAID maintains with indigenous peoples in different regions. Along the same lines, several participants wanted more information on how USAID will utilize the IDA to ensure the needs of indigenous peoples are addressed.

Some of the above comments regarding policy framing were also made in the written submissions. Additional written comments were also submitted. One comment from an INGO stated that the third objective of the draft policy should include explicit reference to indigenous women and vulnerable subsets of indigenous populations since these groups often experience relatively more challenges in realizing their rights and participating in decision-making. While the draft policy does mention these groups, the participant felt that additional emphasis is warranted. The decision-making rights of indigenous women may be especially vulnerable due to a number of factors, including cultural norms that privilege men's decision-making power, women's workload (which may prevent them from actively participating in various community forums), and women's access to education and information.

Another participant stated that if USAID hopes for this policy to support the empowerment of indigenous peoples to exercise their rights, it needs to do more to equip country offices to identify differential project risks on men and women and establish mechanisms to promote the active participation of indigenous women in consultations related to projects.

4.3 OPERATING PRINCIPLES 1-3: IDENTIFY, ANALYZE, ENGAGE

On the second day of the consultation meeting, USAID presented the operating principles and tools established in the draft policy. Following this presentation, participants had an opportunity to ask questions and give comments. The comments and questions raised are organized in this sub-section into the following topics: due diligence (which relates to operating principles 1 and 2: identify and analyze), and the nature of consultation (which relates to operating principle 3: engage).

4.3.1 DUE DILIGENCE

During this session, one of the participants emphasized that due diligence is a fundamental step that should be included at an earlier stage in the policy. This participant further stated that due diligence measures should be carried out during both the “analyze” and “engage” steps before a community either gives or withholds consent to a project. Given that environmental harms negatively impact the livelihoods and wellbeing of indigenous peoples, environmental impact assessments (EIAs) should be mandatory, should be carried out in partnership with affected indigenous peoples, and the results should be shared with communities; otherwise, social harm is likely to follow given that the social and environmental interests of indigenous peoples are intertwined. Results of SIAs and EIAs should be shared with indigenous communities impacted by USAID projects. It was also noted that USAID should do more due diligence to see whether NGOs are actually working with indigenous peoples or if they are writing indigenous peoples into proposals but not actually engaging indigenous peoples. One participant recommended that, as part of the due diligence process, USAID should also conduct conflict analyses as a means of addressing local contexts and finding appropriate entry points for USAID project design and implementation.

One written comment applauded USAID’s criteria⁶ for identifying indigenous peoples, calling these criteria very broad and inclusive of many indigenous characteristics seen throughout the world. However, this participant highlighted that the way in which indigenous peoples are identified in Latin America may differ with the way in which they are identified in Africa, Asia, and other regions. Another written comment stated that the “analyze” and “engage” operating principles should include an assessment of communities’ land and resource rights under both domestic and international laws. USAID missions and staff should also be obliged to understand existing community claims to unrecognized lands and resources.

4.3.2 THE NATURE OF CONSULTATION

After USAID introduced the principles and tools, there was discussion about how the right to FPIC would function in relation to the policy. Participants stated at several points during the discussion that indigenous peoples want to be consulted on upcoming USAID projects, informed about potential opportunities for partnership and collaboration, and given an opportunity to help monitor the implementation of the policy. Several participants stated that they wanted the policy to more clearly define the scope of FPIC (i.e., define the circumstances in which FPIC will apply). It was stressed that formal consultation of communities may be needed in order to get a comprehensive understanding of the issues at play if proposed projects carry a risk of adverse impacts. The ability of indigenous peoples to participate and freely express their views during a consultation without fear of reprisal was also raised as a concern that requires some thought in terms of how to create space for engagement.

Some participants asked about the provision in the policy that stipulates that the US “does not interpret FPIC to require actual consent in the sense of conveying an actual veto right” to indigenous peoples.⁷ Since the US interprets FPIC as “meaningful participation,” participants wanted the policy to explain what is meant by the term “meaningful consultation” in this context. Some of the participants expressed confusion and frustration when discussing the caveat that FPIC does not mean veto right. They

⁶ The policy states “... the following criteria should be applied to determine whether a group is indigenous: (a) selfidentification as a distinct indigenous social and cultural group, as well as recognition of this identity by others; (b) historical continuity with pre-colonial and/or pre-settler societies; (c) collective attachment to territories and surrounding natural resources; (d) customary social, economic, or political systems that are distinct from those of mainstream society; (e) distinct language or dialect; (f) often form non-dominant groups of society; and/or (g) resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.” USAID (2018), p. 3.

⁷ USAID (2018), p. 2.

recommended the policy more clearly articulate the definition of FPIC, preferably in a way that does not dilute the essence of this right.

One participant from Africa discussed how understanding the diversity of different indigenous peoples' groups is essential to ensure effective implementation of FPIC. Other participants stressed that FPIC needs to occur throughout the project cycle and needs to be more than a one-time opportunity to voice concerns. One participant proposed that USAID review the FPIC right established in World Bank Environmental and Social Standard 7 (ESS 7) as a model.⁸

Another participant asked who would be involved in indigenous peoples' engagement and consultation processes; specifically, whether the policy requires governments to engage with IPs, or instead, whether engagement would take place between indigenous peoples, USAID, and implementing partners. He recommended that the policy more clearly articulates the roles and responsibilities with respect to consultation and engagement.

Participants highlighted how indigenous peoples' consultations have often been "put on the back burner" when investment projects are initiated. In some countries, indigenous peoples have been killed or jailed after they rejected proposed development projects initiated in their territories. They emphasized that, if USAID respects indigenous peoples' rights, acts in good faith, and finds mechanisms for inclusive engagement, then indigenous peoples will be able to meaningfully collaborate with USAID, achieve alternative development, and safeguard their territories and environments.

4.4 OPERATING PRINCIPLE 4: SAFEGUARD

Several comments and questions raised at the meeting and through written submissions related to operating principle 4: "safeguard." These comments are organized into the following topics: the policy in relation to international standards on indigenous peoples' rights, and grievance mechanism.

4.4.1 THE POLICY IN RELATION TO INTERNATIONAL STANDARDS

Several participants insisted that the standards on indigenous peoples' rights that are recognized at an international level should be included in the finalized policy. They felt that, without mention of these international standards, the policy will not be effective in safeguarding indigenous rights. Some of the participants noted that they have had difficulty getting governments to acknowledge or respect the presence of indigenous peoples. In some cases, governments have threatened indigenous communities or denied them their rights to exist. Monitoring, oversight, and accountability measures that ensure governments respect indigenous peoples were highlighted as key to safeguard indigenous livelihoods and prevent mistreatment.

Some participants, therefore, stated that they wanted to see more references to indigenous rights established in international instruments (e.g. policy standards, declarations, conventions, guidance documents). The international instruments discussed throughout the consultation meeting included:

- UNDRIP (2007);
- ILO Convention 169 Indigenous and Tribal Peoples Convention (1989);

⁸ ESS 7 limits the recognition of FPIC to a specific set of circumstances, such as when projects have adverse impact on land and natural resources; cause relocation of indigenous peoples; or have significant impact on the cultural heritage of indigenous peoples. World Bank. 2018. Environmental and Social Standard 7: Indigenous Peoples/ Sub-Saharan African Historically Underserved Traditional Local Communities. World Bank: Washington, D.C. Available at: <https://www.worldbank.org/en/projectsoperations/environmental-and-social-framework/brief/environmental-and-social-standards>, p. 79-80.

- Organization of American States American Declaration on the Rights of Indigenous Peoples (2016);
- African Charter on Human and Peoples' Rights (2005); and
- World Bank ESS 7 on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities (2018).

While participants noted that there has been significant progress regarding the realization of indigenous rights at the international level, indigenous representatives highlighted that country-level recognition, legal recognition, implementation, and enforcement remain challenges in many countries. Particularly in the African countries represented, achieving government recognition of “indigenous” status for rural communities has been an uphill battle.

Indigenous representatives emphasized that they are not simply stakeholders – they are rights holders. These representatives wanted to see USAID include indigenous peoples as true partners in development projects as opposed to mere beneficiaries. It was recommended that the policy include language recognizing indigenous peoples as rights holders instead of stakeholders in cases where USAID projects impact indigenous territories.

Another participant asked how USAID intends to design a policy that will empower and protect people in areas that historically have not been protected. In some countries, governments have denied indigenous peoples their rights, stating these groups are not “indigenous” under international human rights law. Several governments of the countries represented in the consultation meeting have signed on to UNDRIP, and adopted ILO Convention 169, and other international instruments, so progress has been made. However, more work need to be done to ensure these international standards are enforced and implemented on the ground.

4.4.2 GRIEVANCE MECHANISM

One participant highlighted that, while it is good that USAID’s bidding process includes a procedure for submitting complaints, it is unclear if or how indigenous peoples can seek redress and access grievance mechanisms if USAID projects violate their rights. Another participant stated there needs to be an independent redress mechanism that can be accessed by aggrieved persons if their rights or livelihoods are violated by USAID projects. This mechanism should provide aggrieved persons with compensation and other forms of non-monetary redress if it is determined that they were aggrieved by USAID projects. Another participant asked whether USAID will fund or support legal claims brought by indigenous peoples against USAID-supported organizations that infringe on indigenous peoples’ rights.

Some of the above comments regarding policy framing were also made in the written submissions. Additional written comments were also submitted. One comment suggested that although the draft policy mentions various tools for community consultation, engagement, and participation in monitoring activities, these are insufficient to ensure accountability for negative impacts on indigenous peoples. The lack of a grievance mechanism renders the policy’s efforts to promote robust engagement and due diligence incomplete. According to this participant, providing access to remedies is particularly critical considering the unanticipated impacts that may arise when implementing USAID projects in indigenous peoples’ territories.

4.5 OPERATING PRINCIPLE 5: PARTNERSHIP

The issue of whether USAID would consider indigenous peoples as partners in implementing policies and measuring compliance with the indigenous peoples’ policy project came up at several points throughout the consultation meeting. These conversations are summarized in detail in this sub-section.

4.5.1 THE NATURE OF ENGAGEMENT AND PARTNERSHIP

Indigenous peoples' representatives stressed that USAID should not think of indigenous peoples as observers of USAID projects but as true partners. Indigenous peoples' representatives desired the opportunity to continue collaborating and providing their knowledge and insights to the policymaking process. While many stated that they wanted more opportunities for direct and active participation, a few participants wanted to see more explanation and clarity regarding the term "co-creation" since they did not find this term immediately understandable. Others in the room encouraged USAID to follow an inclusive approach involving engagement with indigenous peoples when designing, implementing, monitoring, and evaluating activities in indigenous peoples' territories. Participants wanted to ensure indigenous peoples will not be viewed merely as beneficiaries of USAID development projects. One participant stated they wanted to ensure the indigenous peoples policy ensures USAID creates a climate of co-working, cooperation, support, and oversight.

4.6 COMMUNICATION AND KNOWLEDGE SHARING

At several points during the consultation, participants raised issues that did not specifically relate to one of the agenda sessions. In particular, several comments focused on improving communication and knowledge sharing, both between USAID and indigenous peoples as well as among indigenous peoples' groups across different regions. These comments are summarized here.

Participants called for USAID to promote information and knowledge sharing as part of the roll out of the policy. They recommended that communication activities be conducted in mediums that are comprehensible to indigenous communities. Specifically, indigenous participants desired access to information on how development projects will impact them, their lands, and their natural resources. They desired more opportunities for dialogue with USAID decision-makers to ensure a common vision for development. They wanted to work closely on continuing to support the development of USAID's agenda with respect to indigenous peoples. According to one of the participants, cross-learning among indigenous peoples from across the globe is essential for indigenous peoples, providing them with opportunities to share knowledge and practices. USAID was asked to consider recommending that missions make funds available for participation in international learning exchanges. It was recommended that USAID take advantage of traditional knowledge systems to address challenges faced by indigenous peoples.

It was noted that many Western concepts cannot be translated into indigenous languages and vice versa, and so the revised version of the policy should strive to capture these differences since misunderstandings can arise during consultations. One participant highlighted that the Peruvian government has been working on building a glossary of common development terms in native indigenous languages to reduce misunderstandings. This glossary uses local expertise and past experience to create definitions that accurately communicate the meaning of key terms. One participant reminded USAID that some of the language used in the policy may not be understandable to indigenous peoples.

Another point made is that it is difficult for indigenous peoples to engage with USAID when most USAID missions are located in capital cities far away from indigenous areas. Participants wanted more opportunities to come to capital cities and Washington, DC to discuss matters affecting indigenous peoples with USAID. They also wanted to more USAID presence outside of capital cities, particularly in areas with high indigenous populations.

5.0 REFERENCES

USAID. (2018). *Draft USAID Policy on Indigenous Peoples' Issues*. USAID: Washington, DC. Retrieved from <https://www.usaid.gov/democracy/indigenous-peoples-policy>.

World Bank. (2018). *Environmental and Social Standard 7: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities*. World Bank: Washington, D.C. Retrieved from <http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf#page=89&zoom=80>.

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