

## WRITTEN RESPONSE

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The following are in response to follow-up questions from Rep. Steve Cohen based on the testimony given on October 26th, 2021 at the virtual hearing by the Sub-Committee of the U.S. Congress on Water, Oceans and Wildlife entitled Protecting Human Rights in International Conservation.

1. How are the human rights standards you discussed in your testimony different from the World Bank standards for human rights that many countries and organizations use?

Although the World Bank standards for human rights integrate some international human rights standards, they do not fully incorporate these rights and fail to include a critical reporting mechanism that could be used to ensure accountability and further protect the rights of Indigenous Peoples.

In 2017, the World Bank created an Environmental and Social framework<sup>1</sup> to ensure that Indigenous Peoples can actively participate and benefit from development projects impacting their lands and resources. The framework requires borrowers to engage in meaningful consultation and, in limited circumstances,<sup>2</sup> to obtain free, informed, and prior consent (FPIC). Separately, the right to FPIC, and other human rights, are articulated in the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration),<sup>3</sup> which sets forth a minimum standard for well-being and dignity of Indigenous peoples. FPIC reaffirms the right to participate in decision-making processes.

The purpose of the World Bank framework is to ensure meaningful consultation to respect Indigenous rights, yet these standards for consultation do not meet the “gold standard” for *consent* set forth by the Declaration. For example, in the World Bank standards, FPIC is required when a project has adverse impacts on lands or resources of Indigenous Peoples; causes their relocation; or has significant impacts on cultural heritage sites.<sup>4</sup> The Declaration itself, however, does not state any qualifiers about when FPIC must be obtained. Rather, FPIC is intended to apply to *any* action that impacts Indigenous Peoples, their lands, and resources. Limiting the circumstances in which FPIC applies does not conform to the Declaration, nor does it provide for an iterative participation of Indigenous Peoples throughout the design and implementation of a project.

So, while the World Bank and other institutions have used the standards set forth by the Declaration to *inform* their own human rights standards and practices, their limited application means that they are inadequate to fully protect Indigenous Peoples.

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<sup>1</sup> *The World Bank Environmental and Social Framework*, The World Bank (2017), <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf>.

<sup>2</sup> *The World Bank Environmental and Social Framework*, The World Bank at p. 75 (2017), <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf> [hereinafter World Bank].

<sup>3</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, United Nations General Assembly (2007).

<sup>4</sup> World Bank *Supra* footnote 2.

Recognizing the need to create a fulsome approach to participatory engagement and meaningful decision-making, IFIs and non-profits must implement a reporting mechanism to better operationalize the rights of the Declaration. As I mentioned in prior testimony,<sup>5</sup> the Indigenous Peoples Major Group (IPMG) for Sustainable Development and the Rights, and Resources Initiative (RRI) created the Land Rights Standard,<sup>6</sup> which is a more substantial implementation of the Declaration. Article 3 of this standard states that projects, programs, or initiatives are to be planned, implemented, and monitored in full collaboration with Indigenous Peoples. It requires that organizations take into account Indigenous Peoples' self-determined priorities and locally-defined approaches. This engagement standard is far more robust than that set forth by the World Bank standards and exemplifies the best mechanism for organization to fully recognize and respect Indigenous Peoples. These procedures would facilitate and encourage consultation and active participation with options for remedies should FPIC not be sufficiently solicited or respected, thus providing a robust recognition of the rights articulated in the Declaration. Human rights standards as aligned by the Declaration and supported by the United Nations Guiding Principles on Business and Human Rights as well as other human rights norms, should be the measure of a sufficient human rights-based approach, rather than the standards set forth by the World Bank.

2. How does this “gold standard of human rights” promote women’s rights?

A human rights-based approach acknowledges Indigenous collective rights by setting forth a framework for equitable partnerships with all members of Indigenous communities, including women. The gold standard (also known as the Land Rights Standard, as described above) states: “To **acknowledge, respect and protect the full bundle of rights** of Indigenous Peoples as affirmed by the UN Declaration on the Rights of Indigenous Peoples, and the rights of local communities, of Afro-descendant Peoples, and particularly of the women within these groups, as affirmed by ILO 169, including their community-based rights to the lands, territories, and resources they customarily own or use, regardless of whether such rights are legally recognized by a state.”<sup>7</sup> This explicit reference to women not only refers to their rights to lands territories and resources as co-owners, but also to their vital roles and contributions in conservation of biodiversity, sustainable food systems, and resource management.

This framework also provides for women’s active participation in the decision-making process, which is critical as many impacts of development are felt disproportionately by Indigenous women. Article 22 of the Declaration acknowledges that Indigenous women have unique experiences that need to be considered in its implementation. This is because Indigenous women face multiple layers of

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<sup>5</sup> Carling, Joan, *Virtual Hearing by the Sub-Committee of the US Congress on Water, Oceans and Wildlife entitled Protecting Human Rights in International Conservation* (2021) [https://naturalresources.house.gov/download/carling-testimony\\_wow-ov-hrg-102621pdf](https://naturalresources.house.gov/download/carling-testimony_wow-ov-hrg-102621pdf).

<sup>6</sup> *The Land Rights Standard*, Rights and Resources, <https://rightsandresources.org/land-rights-standard/>.

<sup>7</sup> *Id.* at p. 3 (internal citations omitted).

discrimination due to their identity as both Indigenous Peoples and as women.<sup>8</sup> A fulsome approach to human rights ensures that all women's rights are adequately protected across the breadth of their economic, social, cultural, and environmental contributions in their communities.

Indigenous women play a crucial role within their communities. Indigenous women are the grandmothers, the mothers and aunts, and the knowledge holders who pass on traditional languages and cultural practices. When Indigenous women's rights are ignored or violated by development or conservation projects, it threatens the community's survival. Therefore, it is critical to specifically acknowledge the layered experience of Indigenous women when applying a human rights-based approach; in doing so, both the individual rights of Indigenous women *and* collective rights of Indigenous Peoples will be upheld.

3. Why are Indigenous people the best stewards of their land and wildlife and how can the U.S. government direct a larger share of its investments in Indigenous and local community led conservation projects?

To ensure the collective survival of the present and future generations, the conservation of the environment/natural resources is intrinsic in the traditional values, resource management systems, practices, and lifestyle of Indigenous Peoples across the world based on our interdependent relations with our environment. Through centuries of reciprocal relation with the natural world, Indigenous Peoples have developed and continue to evolve traditional knowledge, sustainable systems and practices in resource management of different ecosystems they depend on, and practices and values that uphold the common good, conservation, mutual support, respect for nature, and sustainable living.

The Indigenous-led stewardship plays a critical role in protecting the Earth's biodiversity and mitigating the effects of climate change.<sup>9</sup> Indigenous Peoples rely on their natural environment for everyday needs ranging from food and water, to their livelihood and cultural preservation. For generations, Indigenous Peoples have used traditional knowledge to protect and manage lands. For this reason, they are the most able to forecast environmental impacts and concerns linked to climate change. Conservation projects must utilize and incorporate the knowledge of these traditional land stewards.

The Director General of International Union for Conservation of Nature fully acknowledges the critical contribution of indigenous peoples in conservation, and the need to protect their rights with this statement: "First and foremost, biodiversity thrives in the care of indigenous communities. As much as 80% of the world's remaining forest biodiversity lies within indigenous peoples' territories, and indigenous and community lands store at least 24% of the above-ground carbon in the world's tropical forests. In Bolivia, Colombia and Brazil, for instance, researchers studying deforestation and forest

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<sup>8</sup> *Redefining protected areas: A global report on criminalization of, and human rights violations against Indigenous Peoples in conservation*, Indigenous Peoples Rights International (2021) <https://www.iprights.org/resources/publications/redefining-protected-areas-a-global-report-on-criminalization-of-and-human-rights-violations-against-indigenous-peoples-in-conservation>.

<sup>9</sup> *Challenges and Opportunities for Indigenous Peoples' Sustainability*, United Nations (Apr. 2021) <https://www.un.org/development/desa/dspd/2021/04/indigenous-peoples-sustainability/>.

carbon emissions found that lands managed by indigenous communities emit at least 73% less carbon than lands managed by other groups.”<sup>10</sup> He further states that, “We cannot achieve conservation and wellbeing for people and planet unless we respect and value the rights of indigenous peoples. For centuries, indigenous peoples across the world have preserved much of Earth’s biodiversity.”<sup>11</sup>

The U.S. government should look to support Indigenous-led initiatives. This would, in turn, address the specific needs of the communities, create and enhance opportunities for active participation from community members, specifically Indigenous women, and contribute to the protection of the environment and resources which is critical in achieving the 30/30 biodiversity conservation target which the U.S. has fully committed to support.

Given the essential roles and contributions of Indigenous Peoples to conservation, Indigenous Peoples deserve to receive direct assistance to support their needs and priorities as stewards of biodiversity. The U.S. government can direct their support to indigenous communities as stewards of different ecosystems with these recommendations.

1. Establish a working group or committee to include credible Indigenous leaders to conduct scoping, outreach to Indigenous organizations networks at the different levels (global, regional, national, and grassroots) to establish linkages and determine the needs and priorities of Indigenous communities in the frontline of conservation and biodiversity protection.
2. Define a simplified mechanism and procedures to facilitate access to funds and other technical assistance needed by Indigenous communities in their conservation efforts.
3. Establish working relations with credible Indigenous organizations/institutions/networks with sound financial and accountability mechanisms as potential channels for funding support to indigenous communities.
4. Ensure the conduct of regular monitoring and participatory assessment or review on the impacts, challenges, and lessons learned in the partnerships/collaborations and support provided to Indigenous organizations and communities.

The support to the conservation efforts of Indigenous peoples should not be just project-based but should strive to meet the needs and priorities defined by communities in their conservation efforts. The support shall be multi-year/long-term as this is the kind of intervention needed with more strategic outcomes. The support should also be based on goodwill and good-faith and should have the flexibility to allow communities to respond to arising needs and changes while ensuring the continuity of their conservation efforts. These are based on lessons learned and are important in developing mutually beneficial interventions to support conservation efforts of Indigenous peoples and local communities

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<sup>10</sup> *IUCN Director General’s Statement on International Day of the World’s Indigenous Peoples*, IUCN (Aug. 9, 2021) <https://www.iucn.org/news/secretariat/201908/iucn-director-generals-statement-international-day-worlds-indigenous-peoples-2019> (internal citations omitted).

<sup>11</sup> *Id.*

Should the U.S. government continue to support projects that are led by non-profit organizations and funded by IFIs, it must also:

- Ensure that the entity has established - and adhered to - standards that fully integrate Indigenous Peoples' rights as enumerated in the Declaration, specifically articles 3,4,5,7, and 10;
- Ensure that the projects, programs, or initiatives are planned, implemented, and monitored in full collaboration with Indigenous communities;
- Ensure that projects, programs, or initiatives, adequately consider Indigenous self-determination priorities and locally defined approaches by way of robust consultation and sufficient FPIC processes determined by the affected indigenous communities;
- Perform or require the performance of due diligence assessments and procedures, that conform with the Declaration and other human rights standards, so as to safeguard human rights, including the proper conduct of FPIC;
- Require conservation organizations to ensure that all their partners and related personnel including eco-guards are fully aware and knowledgeable of their human rights commitments, responsibilities, policies and related mechanisms
- Require accountability on the part of the IFI or conservation organizations through transparent and public reporting mechanisms or procedures; and the establishment of effective redress mechanisms accessible to indigenous peoples and local communities.
- Establish a monitoring body for compliance to human rights due diligence and other policies and guidelines; and
- Conduct regular evaluation on the impacts, lessons learned, and challenges attendant to these projects, programs, or initiatives.

Taking these steps would more adequately safeguard human rights, specifically the rights of Indigenous peoples.

I am happy to respond in verbal or written forms to matters needing clarification and or elaboration from this and my earlier submissions.

Thank you.