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## Indigenous Peoples and Oil Companies: Respect the Differences

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The paper describes what is considered to be best practice (in terms of international and national laws and policies). It then discusses how various contemporary projects in Far Eastern Russia and Indonesia, *inter alia*, attain these standards. Finally we shall propose a set of standards and best practices that should be adopted by professionals working in the Petroleum industry that take into account the concerns and priorities of Indigenous Peoples.

### Abstract

The search for oil is bringing petroleum engineers increasingly face to face with the world's Indigenous Peoples. Simultaneously, Indigenous Peoples, conscious of the international value of resources such as oil, are becoming increasingly better organized, rights-savvy, and globally connected.

Acting in a socially responsible manner is important for the petroleum industry both from the perspective of ethics as well as from the perspective of reputation. This paper describes how Indigenous Peoples can be engaged on an equitable basis, giving them full respect, identifying how best to mitigate any potential adverse impacts and identify in a participatory manner how they can be enabled to benefit from any Project.

Work experience among Indigenous Peoples in Russia and throughout Asia leads the authors to identify the importance of 'respect' for Indigenous Peoples' values and cultures. This can avoid multi-million dollar delays and maintain a company's reputation.

Focusing on the Sakhalin II oil and LNG project in Russia's Far East, the paper advises companies to create a special indigenous space within their corporate hierarchy; with Human Resources, Finance and External Affairs having to adapt their normal procedures and styles. By seemingly "giving away the store," but actually "giving face" to often marginalized economic and social actors, those in charge of the Indigenous Peoples strategy at Sakhalin Energy countermanded corporate logic while embracing a philosophy of cultural and ethnic partnership.

## Introduction

With the growing and focused efforts to search for natural resources to satisfy the world's ever-increasing desire for energy, oil companies are entering territories that had hitherto not been feasible. This search for oil is bringing petroleum engineers increasingly face-to-face with the world's Indigenous Peoples, who often inhabit these very same territories. Simultaneously, Indigenous Peoples, conscious of the international value of resources such as oil, are becoming increasingly better organized, rights-savvy, and globally connected.

Acting in a socially responsible manner is important for the petroleum industry for both ethical and reputational reasons. This paper will describe how Indigenous Peoples can be engaged on an equitable basis—giving them full respect—and will identify how best to mitigate any potential adverse impacts and outlining a participatory manner for how they can be enabled to benefit from any Project while at the same time enabling the objectives of an oil company to be achieved.

Work experience among Indigenous Peoples in Russia and Asia leads the authors to identify the importance of respect for their values and cultures. This can help companies avoid multi-million dollar delays and enhance their reputations as socially responsible global corporations.

## I. Context

### *The Disadvantages Faced by Indigenous Peoples*

The United Nations (UN) estimates that there are at least 300 million Indigenous Peoples in the world, belonging to 5,000 indigenous groups in more than seventy countries (UN 2001). They represent a great diversity of ways-of-life and systems-of-knowledge, and constitute one of humanity's great treasure-houses of cultural diversity and spirituality. Yet it is also true, unfortunately, that Indigenous Peoples are over-represented amongst the world's poor. This not only means that they have low incomes, but that they are less likely to live in safe or adequate housing, and are more likely to be denied access to safe water, sanitation<sup>1</sup> and even employment. Life expectancy at birth of Indigenous Peoples tends to be between 10-20 years less than for the rest of the population. Infant mortality is between 1.5 to 3 times greater than national averages. In most countries Indigenous Peoples have less access to education than other groups and they are often subjected to curricula designed for other cultural groups which ignore their own history, knowledge or values. They tend to have less access to national health systems (where they exist) and appropriate medical care, and may suffer nutritional problems when denied access to their traditional lands. These patterns exist across the spectrum of wealthy to poor countries. In summary, according to the United Nations Working Group on Indigenous Populations (WGIP),

“Indigenous peoples worldwide continue, by and large, to be disadvantaged in every area of life.” (Daes 2001)

### *A Growing Political Awareness*

Over the past fifty years, in addition to the rush for resources to support the ever-increasing hunger for ‘energy’ and thus resources, the global agenda with respect to poverty alleviation and the recognition and respect of Human Rights has developed and acquired a considerable prominence on the international political agenda. These developments have taken place in the context of globalization and increased communication.

For Indigenous Peoples, this has meant more interaction with the non-indigenous world and an awareness that they were often disadvantaged in terms of access to basic services, human rights, and sharing the benefits of resources found on their traditional territories. Indigenous Peoples have been able increasingly to lobby effectively as a group for greater rights and protection.

### *The Development of Legal Frameworks and Jurisprudence*

The international community, in the form of both intergovernmental bodies such as the United Nations and international financing institutions (e.g., the World Bank Group (WBG), the Inter American Development Bank (IDB), and the European Development Bank for Reconstruction and Development (EBRD), together with national governments, has responded to this changing political-economic environment with a number of measures. The recognition of the rights of Indigenous Peoples has been, in part, a response to a moral argument for recompense for past injustices and contributed towards a sympathetic hearing based on outsiders' perceptions of their unique cultural status, links to the land and knowledge of their environment. This attention could also be ascribed to an acknowledgement of the fact that Indigenous Peoples' rights have been violated in all regions of the world, particularly in connection with extractive industries and agro-industry, which both disproportionately affect Indigenous Peoples<sup>2</sup>. The UN Committee on the Elimination of Racial Discrimination, for instance, explains that one of the reasons it adopted a General Recommendation on Indigenous Peoples in 1997 is because:

“in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historic identity has been and still is jeopardized.”

<sup>1</sup> Bruntland, G.H. (1999) International consultation on the health of Indigenous Peoples, Speech transcript, Geneva, World Health Organization.

<sup>2</sup> On palm oil see: M. Colchester et al. 2006. Promised Land. Palm Oil and Land Acquisition in Indonesia: Implications for Indigenous Peoples and Local Communities, Forrest Peoples Programme, Perkumulan Sawit Watch, HuMA and the World Agroforestry Centre

Almost all states invoke the public or general interest in relation to extractive operations on indigenous lands, despite the fact that this is essentially a ‘majority rules’ test that is inherently biased against minority Indigenous Peoples and is generally not subject to judicial review (FPP & Tebtebba 2006). As explained by a member of the WGIP (Daes 2001):

“To attract foreign investment and trade many developing countries have opened to extractive industries, such as mining and logging, hitherto isolated parts of their territories, which are often the last refuges of indigenous peoples and their cultural diversity. By such means indigenous peoples are collectively sacrificed in order to increase the income of other citizens. Racism against indigenous peoples makes it relatively easy for national political and business leader to contemplate such measures and to mobilize wider public support for them. If indigenous communities resist dispossession, racism makes it easier for politicians to justify the use of violence to crush protesters.”

This does not mean that there have been no improvements in national laws pertaining to Indigenous Peoples’ rights over the past two decades. Nevertheless, it is widely claimed (certainly amongst the organized representatives of Indigenous Peoples) that “extractive sector legal reforms have predominantly weakened Indigenous Peoples’ rights, both legally and in practice,”<sup>3</sup> Thus, indigenous lands and territories are increasingly on the front line of state- and transnational-corporation-directed resource exploitation operations where protections in domestic legal frameworks are for the most part inadequate and/or selectively implemented and enforced<sup>4</sup>. Also of note are the frequent and significant disparities in power and resources between the government ministries or agencies responsible for extractives and those responsible for Indigenous Peoples.

In response to the lack of adequate legislation and to the issues identified above, the UN and its various commissions have developed a body of “laws,” conventions, and norms to protect and empower Indigenous Peoples. The International Labor Organization (ILO) ILO Convention No. 169<sup>5</sup> is the main starting point and is the only international instrument that is in force that addresses Indigenous Peoples specifically. Although ratified only by 17 countries<sup>6</sup>, it is used as a

reference for policy and/or legislative development by intergovernmental organizations, countries that have not ratified it, and by Indigenous Peoples themselves as a tool for the promotion of their rights. In recognition of the fact that Indigenous Peoples are likely to be discriminated against in many areas, the fundamental principle is that of non-discrimination (Articles 3 and 4). Furthermore, taking into account the vulnerability of indigenous and tribal peoples, Article 4 of the Convention calls for the adoption of special measures to safeguard the persons, institutions, property and land, cultures, and environment of these peoples. It also stipulates that these special measures not go against the wishes of the Indigenous Peoples. The spirit of consultation and participation constitutes the cornerstone of Convention No. 169. The Convention requires that indigenous and tribal peoples be consulted on issues that affect them (Article 6). It also contains a number of provisions on indigenous territorial rights. There is a requirement that states recognize and respect the spiritual, cultural, and economic relationship that Indigenous Peoples have with their lands and territories, with a special reference to the collective aspect of this relationship (Articles 13(1) and 14). Lands are defined to include “territories, which cover the total environment of the areas which the peoples concerned occupy or otherwise use” (Article 13(2)). A number of formal cases have been submitted to the formal Governing Body of the ILO which concern Indigenous Peoples and extractive industries. In a case against Columbia pertaining to oil extraction, the Governing Body explained that “the existence of an exploratory or operational project immediately adjacent to land that has been officially recognized as a reserve of peoples concerned clearly falls within the Convention” (MacKay 2002). In a similar case involving Ecuador, the Governing Body’s opinion was that, whilst appreciative of the difficulties involved in defining rights associated with the exploration and exploitation of subsurface products, “Convention 169 still requires that the parties involved seek to establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect and full participation.”<sup>7</sup>

In 1992 The Rio Convention on Biodiversity<sup>8</sup> (CBD), a binding international environmental treaty, called for the recognition and support of the identity, culture, and interests of Indigenous Peoples and their effective participation in the achievement of sustainable development. Specifically, it

<sup>3</sup> This comment was made in reference to to NCIP Administrative Order No. 01, 2006 and the Free and Prior Informed Consent Guidelines 2006. [see: FPP & Tebtebba 2006]

<sup>4</sup> For example: Report of the Roundtable on Mining and Indigenous Peoples Issues. Convened through the IUCN-ICMM Dialogue on Mining and Diversity, Gald Switzerland, 8-9 November 2005, p. 4.

<sup>5</sup> This was preceded by Convention 107, adopted in 1957, the first convention to focus solely on Indigenous and Tribal peoples. It is ratified by 27 countries. Its approach of viewing assimilation and integration as the only ways for Indigenous Peoples to survive, was questioned, and in response Convention 169 was developed and drafted. [see: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>].

<sup>6</sup> As of 2007, the following 17 States have ratified ILO Convention 169: Argentina, Brazil, Colombia, Costa Rica, Colombia, Denmark,

Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay, Peru and Venezuela. States which have submitted it to their national legislatures for ratification or are discussing ratification are Chile, El Salvador, Finland, The Russian Federation, Panama, South Africa, Sweden and Sri Lanka. The Asian Development Bank and the UNDP have incorporated some of its substance into their policies on Indigenous Peoples.

<sup>7</sup> This quote was taken from FPP & Tebtebba (2006), citing a report of the Committee of Experts set up to examine the representation alleging non-observance by Ecuador of the Indigenous and Tribals Convention 1989 (No. 169) made under article 24 of the ILO Convention Constitution by the Confederacion Ecuatoriana de Organizaciones Sindicales Libres (CEOSL) [Doc. G.B.277/18/4/GB.282/14/2, submitted 2000] at para 36.

<sup>8</sup> <http://www.cbd.int/default.shtml>

provides that state parties should protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements (Article 10(c)). The Secretariat's background paper specifies: "necessary conditions [should be] in place, namely, security of tenure over traditional territories and marine estates; control over and use of traditional natural resources; and respect for the heritage, languages and cultures of indigenous and local communities" (Juma 1997). The CBD also provides that the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for, the rights of the indigenous and local communities consistent with national and applicable international obligations<sup>9</sup> (CBD 2004). The international obligations are defined, *inter alia*, in international human rights law. This is particularly relevant with respect to large extractive industry projects, such as the Chad Cameroon pipeline (see section below), which also often include biodiversity offsets to compensate for habitat loss. These offsets also affect Indigenous Peoples' rights and are directly related to the extractive project (FPP & Tebtebba 2006).

International human rights law places clear obligations on states in relation to resource exploitation which may affect Indigenous Peoples' lands and territories. The basic principle, reaffirmed at the 1993 Vienna World Conference on Human Rights is that "(w)hile development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgment of internationally recognized human rights" (VDPA 1993). This approach has been endorsed by the Inter American Court of Human Rights<sup>10</sup> and the African Commission on Human and Peoples' Rights<sup>11</sup> (FPP & Tebtebba 2006).

In 2002, the UN Economic and Social Council established the Permanent Forum on Indigenous Peoples with the aim to advise on social and economic development as well as issues relating to culture, education, and health.

#### ***Development of Safeguards Policies by Multi-lateral Development Institutions***

Although the World Bank had had environmental and social policies since the early 1980's, it was not until 1997 that the concept of "safeguard policies" was first articulated by World Bank management in response to external concern about the environmental and social impacts of its projects. Of the ten mandatory safeguard policies, three specifically addressed social issues: Indigenous Peoples, resettlement, and cultural heritage. Stimulated by the high visibility of a number of Inspection Panel cases focusing on adverse social impacts

and the complaints of affected groups, attention to social safeguard issues has increased within the World Bank. Technical support for safeguards is now a core element of the work program of all World Bank social teams.

Some of the earliest Bank work that disaggregated social groups and focused on those that were vulnerable or disadvantaged, involved Indigenous Peoples. In 1993, Shelton Davis edited a document on *Indigenous Views of Land and the Environment*. In the same year the World Bank hosted the Second Inter-Agency Workshop on Indigenous Peoples and Development in Latin America, a workshop that focused on problems faced by Indigenous Peoples and the steps being taken by international agencies to address them. Building on this work, the 1994 publication of *Indigenous Peoples and Poverty in Latin America: an Empirical Analysis*, by two economists, Harry Patrinos and George Psacharopoulos, moved the welfare of Indigenous Peoples to the forefront of thinking in the Latin American region. This book documented the socioeconomic conditions of Indigenous People using data from national survey sources. The report showed, for example, that 87% of all Indigenous Peoples in Guatemala lived below the poverty line, and 61% were below the extreme poverty line—a shocking finding even to those who worked in the country. Subsequently, measures to avoid adverse impacts on Indigenous Peoples were increasingly incorporated into projects in Latin America. Social scientists played a growing role in designing proactive strategies to strengthen the control of Indigenous Peoples over their lands and resources, build on their traditions, and strengthen their capacity to help themselves (Davis 2004). The concept of Indigenous Peoples participation began as a component of the larger effort to incorporate social analysis and stakeholder participation into World Bank projects.

In addition to the above, the growing recognition of Indigenous Peoples rights, in the form of international obligations emanating from a legal framework, and in response to increased demands for protection and rights the multi-lateral development institutions started to develop their own policies and good practice. This has been an iterative process with the emphasis and objectives changing in response to experience and the increased politicization of the issue. In 1982, the World Bank developed its first Indigenous Peoples Policy with the acknowledgement that tribal people were more likely to be harmed than helped by development and with the main objective of protection. Its second policy in 1991<sup>12</sup> (O.D. 4.2) went beyond safeguards and protection and provided for Indigenous Peoples to benefit from projects, while its 2005 replacement policy of OP 4.10 now specifically calls for indigenous communities to share in the commercial exploitation of their lands and resources. The Asian Development Bank's (ADB) policy in 1998<sup>13</sup> has followed the World Bank's policy fairly closely, although it can also be applied in some cases to non-indigenous minority ethnic groups. The IDB policy of 2005<sup>14</sup> went further in requiring

<sup>9</sup> Decision VII/28 Protected Areas, (Articles 8 (a) to (e)) at para 22 [p. 346].

<sup>10</sup> see: Report on the Situation of Human Rights in Ecuador. 1997. OEA/Ser.L/VII.96, Doc. 10, rev. 1 [24 April 1997].

<http://www.cidh.oas.org/countryrep/ecuador-eng/index%20-%20ecuador.htm>.

<sup>11</sup>Referring to the Ogoni case.

<sup>12</sup> <http://go.worldbank.org/WITLZXXTTO>

<sup>13</sup> <http://www.adb.org/Development/policies.asp>

<sup>14</sup> <http://www.iadb.org/exr/pic/>

informed consent if Indigenous Peoples are to be resettled. The most recent policy to be developed relating to Indigenous Peoples is that of the International Finance Corporation (IFC) and its Performance Standard 7, which shall be discussed below, as it is particularly pertinent for the private sector and extractive industries. The EBRD is also in the process of revising its policy requirements.

The two most sensitive issues for Indigenous Peoples, and which related directly to extractive industries involve control over resources and the right to consent: with some indigenous groups arguing that the World Bank should ensure security of tenure over lands and resources before any actions are taken in territories occupied by indigenous groups; and others arguing for prior and informed consent, before any action can be taken (Davis 2004).

The next sections evaluate past experience of addressing these issues and then describes current good practice

## II. Evaluating Past Experience

As discussed above, much of the legal frameworks, jurisprudence and policies for the protection of Indigenous Peoples' interests were developed in response to unclear obligations and bad experiences. In this section we shall illustrate some generic themes of past experience that, when inappropriately addressed, have led to confrontation.

In 2003, a World Bank Group (WBG) Evaluation observed that mining and energy projects (OED 2003):

“...risk and endanger lives, assets and livelihoods of [Indigenous Peoples]. Moreover, modern technology allows interventions in hitherto remote areas, causing significant displacement and irreparable damage to Indigenous Peoples land and assets. In this context, Indigenous Peoples living on these remote and resource rich lands are particularly vulnerable, because of their weaker bargaining capacity, and because their customary rights are not recognized in several countries.”

While some Indigenous Peoples have benefited from extractive industries, namely in the so-called developed countries, many operations have had devastating impacts, undermining even their ability to sustain themselves physically and culturally.

The Chairperson of the UN Permanent Forum on Indigenous Issues has stated (Carus et al. 2003):

“For many Indigenous Peoples throughout the world, oil, gas, and coal industries conjure images of displaced peoples, despoiled lands, and depleted resources. This explains the unwavering resistance of most indigenous communities with any project related to extractive industries.”

## *Findings of the Extractive Industries Review*

The Extractive Industries Review (EIR) was set up in 2001 by the joint International Finance Corporation/World Bank Mining Department and the Oil, Gas, and Chemical Department, with the appointment on 19 July 2001 of Dr. Emil Salim, former Minister of the Environment for Indonesia, as Eminent Person to the Review. The EIR was carried out in parallel with other reviews. The EIR was designed to engage all stakeholders—governments; civil society, represented by nongovernmental organizations, Indigenous Peoples' organizations, affected communities, and community-based organizations, and labor unions; industry (oil, gas, and mining companies); academia; international organizations; and the WBG itself—in an effective dialogue discussing the question: Can extractive industries be a vehicle for poverty alleviation through sustainable development, and, if so, is there a role for the WBG to play to achieve this aim? (EIR 2003c) In November 2003, a multi-volume report was issued.

Of the criticisms directly addressing the treatment of Indigenous Peoples by extraction projects, the EIR (2003a) emphasized that:

- extractive activities on Indigenous Peoples' traditional lands, territories, and resources without guarantees for their rights created public disorder, health concerns, political and social instability, and legal uncertainty
- the policies of the IFC and the Multilateral Investment Guarantee Agency (MIGA) guiding community and Indigenous Peoples' participation in decision-making processes, benefits-sharing with local communities, human rights, and project transparency tended to fall short of industry best practice
- WBG Safeguard Policies on Indigenous Peoples and involuntary resettlement sought only to mitigate the impacts of destructive development schemes and permitted forced resettlement (the primary cause for an Indigenous Peoples' land loss, and constituted a principal factor in the process of ethnocide)(UN 1993). Furthermore, MIGA and IFC also had no explicit commitment to ongoing consultation after a project has been approved (CAO 2003)
- Indigenous Peoples often left traditional livelihoods behind in search of opportunities at extractive industry projects, but at project closure they faced the loss of these temporary livelihoods. Communities were also left to deal with the loss of community services, long-term environmental risks, and unresolved grievances.

In many ways, the criticisms identified above reflect the tendency of project lenders and sponsors to underestimate their social safeguard implementation commitments in the four general areas: of i) participation/consultation, ii) mitigation/compensation; iii) disclosure/transparency; and iv) beneficiary assessment. In the next section, we shall examine

past project experiences in relation to each of these four issues, as well in relation to other issues, including involuntary resettlement, land rights, gender, and grievance mechanisms. This shall set the scene for better understanding of the relationship between good social practices and successful, profitable project implementation.

### ***Stakeholder Engagement***

Effective stakeholder engagement requires a full understanding of all stakeholders involved, their specific characteristics, and inter- and intra-group dynamics. A critical aspect of every project affecting indigenous communities is the challenge of achieving informed, consensual participation. One of the major challenges faced by project sponsors is overcoming the lack of trust that many indigenous groups have of the extractive industries in general. This derives, principally, from a poor track record historically on the part of extraction companies. Many companies have failed to bring Indigenous Peoples into the decision-making processes of project design (Ruiz 2004). However, the nonparticipation of Indigenous Peoples in the development of plans affecting their lives and resources is often perceived as a violation of these groups' fundamental human rights. Negative precedents in terms of relationships and practice cannot be ignored, and if ignored or minimized, will be done at a cost to the project. Even when Indigenous Peoples are brought into project planning and decision making, a host of difficulties must still be overcome. Miscommunication is frequently an obstacle to effective collaboration, with different stakeholders generally attentive to different priorities, with little effort made to understand other positions. Non-recognition of the differences in time concepts between Indigenous Peoples and non-indigenous communities (i.e. not factoring in the extra time that might be required to work indigenous institutions into consultation schedules) can also lead to significant project delays and added costs.

Another challenge is the assumption that indigenous communities are homogeneous, when in fact each community presents a diversity of relations and gender situations. Such a misunderstanding typically occurs when corporations approach consultation as an irksome chore rather than a chance to improve and legitimize project design. In addition to demonstrating a lack of respect for indigenous cultures, the perception that all indigenous groups are the same impedes the appropriate identification of stakeholding groups. It also opens the corporation to severe criticism and reputational damage.

An illustrative example of some of these points is the Chad-Cameroon pipeline project. In 2003, a report carried out on the project for the Extractive Industries Review by two environmental NGOs<sup>15</sup> in cooperation with Cameroon's Bagyéli indigenous community claimed the World Bank failed to adhere to its social safeguard policies by not giving equal respect and treatment to the Bagyéli and not adequately and meaningfully including them in the development process

(including in the drafting of the Indigenous Peoples Development Plan), especially relative to their Bantu neighbors. This criticism was framed in the language of a human rights violation and publicized throughout the international community, causing significant reputational damage to the IFC, among other project lenders and sponsors. To assuage this and similar criticisms regarding project consultation, the IFC enlisted the support of an External Compliance Monitoring Group at an additional cost of approximately USD 100,000 per visit to the project site, and amounting to just under 5 percent of the Consortium's total environmental and social management costs, which come to of approximately USD 40 million per year (ESDD 2006).

Not incidentally, most of the above-mentioned challenges are components of a larger, structural deficiency in processes of participatory consultation, namely the lack of capacity-building measures that enable Indigenous Peoples to interact directly with international organizations, national and local authorities, and private institutions to identify their development priorities and have their desires heard. By failing to consult with indigenous communities to learn from them what areas they prioritize, project sponsors miss the opportunity to form a partnership for stable project comanagement during the operational phase.

### ***Forced Involuntary Resettlement***

Of all the potential project impacts on indigenous communities, the one that is most feared and resisted is their forced resettlement.

The Nam Theun 2 Hydropower Project is a highly controversial 50-meter-high dam that straddles the fourth largest tributary of the Mekong, adjacent and to the west of the Nakay-Nam Theun National Biodiversity Conservation Area. It involved the relocation of 5,700 indigenous people and impacted about 100,000 villagers (DDP Secretariat 2007). A 2004 World Bank review of this project reported on the Lao government's forced eviction of 34 households of Vietic speaking peoples (a language group unrelated to all others in the area) from their native forests to a village called Ban Nakadok (Scudder & Talbot 2004). The next year, ten more families were forced to move to another village, Ban Nathon. Tragically, the decision to relocate these communities appears predicated on the mistaken notion that all indigenous groups in the project area are fundamentally similar (essentially all dependent on agricultural production)—ignoring not only the evidence provided to the contrary by project anthropologists with long-term experience in the country, but ignoring also a case from the mid-1970s wherein several Vietic households died shortly after being forcibly relocated to the selfsame Ban Nathon village. As anthropologist James Chamberlain explained, "[The Vietic speaking peoples] are primarily hunters and gatherers traditionally, with little or no agriculture, depending upon foraging and nomadism as a way of life... [relocation] hasn't worked... most of them have died, actually, as a result of living in a village, for both psychological and physical reasons" (Lang 2005). The international uproar (e.g., Lang 2005; Chan 2005; Gatsiounis

<sup>15</sup> Planète Survey-Environnement et Développement Durable and Centre for Environment and Development

2006; Lawrence 2007) that has resulted from this and similar social policy implementation failures has cast a negative light not only on the project itself, but also its private-sector sponsors, including Transfield Holdings of Australia and Electricite de France.

It was also claimed that, to some extent, the economic benefit of the Chad-Cameroon project stemmed from the compensation programs, such as direct payments, project employment, and stipends for participation in the two training alternatives to household resettlement (Esso 2006). Project detractors, however, have raised a number of concerns about these very same project relocation procedures and compensation programs. In light of Amnesty International and U.S. Department of State findings of massacres of unarmed civilians in the oil-producing region and the apparent disappearances of persons while in government custody throughout the project's planning and preparation period, concerned parties have raised the question of how the compensation provided to Project Affected Peoples (including Indigenous Peoples) could have been fairly established when these people were unable to protest or even speak freely (CEDF 1999)

Even with questions about the consultation process aside, it has been suggested that there is a high risk that resettled peoples (mostly groups living in southern Chad) cannot be guaranteed that their lives will be improved vis-à-vis the project. Furthermore, detractors have also expressed concern that the Chad government lacked the institutional capacity to enforce project compliance with the Bank's relocation safeguard policies. (CEDF 1999)

### *Mitigation and Compensation*

Determining and implementing appropriate mitigation and compensation measures is another challenge for projects affecting indigenous communities. It is important that the cultural values and practices of these groups is taken into careful consideration during project design, as inappropriate measures are nearly as problematic as the provision of no mitigation measures or compensation.

Failure to appropriately take into account the traditional livelihoods of project-affected indigenous communities is one way companies have erred in the past. As noted above, projects subsuming several different indigenous groups must be especially vigilant against the assumption that indigenous communities are homogeneous. For instance, programs to support agricultural development are inappropriate for nomadic, migratory groups, as is a relocation plan that aims to settle such groups in village settings. Moreover, poorly designed compensation packages increase the susceptibility of these individuals and their communities to external shocks, especially if they encourage recipients to abandon traditional livelihood practices to take part in cash economies. A case study on the extractive industries sector in Papua New Guinea for the EIR—examining the Lihir Gold Mine Political Risk Insurance cover provided by the Multilateral Investment Guarantee Agency—explains a common problem of using

cash as a means of compensating Indigenous Peoples: “many recipients lack understanding of basic concepts like banking, interest rates, or investment and there are no programs to educate or assist them in alternatives to spending their cash incomes” (FPP 2003). Such compensation programs are all the more dangerous when they are not designed to continue beyond project closure. Unfortunately, social and economic planning for project closure across the industry have lagged far behind environmental planning (EIR 2003a); currently, WBG policies provide no clear guidance concerning project closure.

Similarly, companies must make sure that compensation packages for indigenous communities do not increase local tensions by setting off a scramble for access to benefits. BP Indonesia, as part of its social package for project-affected people impacted by its Tangguh LNG initiative, found that the selection of 10 “Directly Affected Villages” to receive the bulk of its compensatory and benefits packages left other excluded villages incensed that their interests were ignored. Furthermore, by excluding nonindigenous in-migrants to the region from direct benefits, yet another level of tension was added to the social scene. To combat these negative developments, changes in the social plan were needed. The lesson is clear: do a good social assessment to assure that local views on who should benefit from the project are included when the stakeholder and benefits-receiver lists are being compiled.

### *Land Rights and Land Titling*

As discussed above, international law requires that Indigenous Peoples' ownership and other rights to their lands, territories, and resources traditionally owned or otherwise occupied and used, be legally recognized, respected, secured in fact, and protected. This includes titling and demarcation and measures to ensure the integrity and sustainability of those lands and territories. However, developing appropriate mechanisms for titling can be complicated and requires special attention, even though it remains primarily a responsibility for national governments. Private companies need to understand the context and implications of issues relating to land rights, even if it is not their responsibility. For instance, formal land titles and registration supposedly give poor people the collateral necessary to qualify for loans that can be used to invest in poverty-reducing activities. However, due to the failure of most land titling initiatives to consider discriminatory cultural and legal practices that inhibit women's ownership and control of land, land privatization often perpetuates inequality between men and women (see the gender section below) (Dennis & Zuckerman 2006).

Private companies, however, might be asked to work with project lenders and other project sponsors to address titling issues in the preparation of an Indigenous Peoples Development Plan (IPDP). A good example of a sponsor successfully enabling this issue to be addressed is the Bolivian section of the Bolivia-Brazil Gas Pipeline Project, which helped to establish Indigenous Peoples' land rights through titling of the Izozog community territory (about 1.9 million

hectares). It supported indigenous communities in developing sustainable resource management practices through the establishment of a USD 1 million trust fund for the protection and management of the Kaa-Iya/Chaco National Park. This was managed by an indigenous NGO in collaboration with Bolivia's National Protected Areas Agency. In another case, Petrobras facilitated the process by transferring project funds to the IPDP executive committee (Batstone & Jammi 2003). Of course, while this particular initiative is generally understood as a success, were the land titling mechanisms found to be inappropriate the reputational risks would also have reflected back on Petrobras, so it makes sense for companies to take heed.

A similar forward-looking approach was British Petroleum's review of customary law (community law or *adat*) in their preparation of the Tangguh LNG project in Indonesia's easternmost province of Papua. Before the project could even begin to determine compensation or benefits levels, the company had to understand how local tribes understood their rights and obligations to the land and resources that the project would utilize. When the Integrated Social Plan made use of this local approach, it saved the company from a confrontation with local ways of resolving conflicting resource demands.

### **Gender**

Appropriately addressing gender issues has been problematic for past project mitigation and compensation measures. Women have often been sidelined in project consultations over compensation and are generally left with little or no control over and access to benefits from development initiatives. When jobs are available through a project, women typically do not have equal access, and where they can secure employment, they tend to suffer discrimination. Even those women who do not work for the project can be negatively affected by project employment when their husbands and sons obtain jobs, thereby increasing the women's workloads. Alternatively, incorrect assumptions have been made that traditional cultural roles conflict with women's rights. This is neither completely false nor completely true, as some aspects of traditional roles imply participation and decision making by women (Gualinga 2004). The dynamics of new processes may place indigenous women in roles of increasing importance which could either overburden them and/or inappropriately exclude men. This risk needs to be properly managed.

Returning to the example of the Lihir mining project in Papua New Guinea, one can see how failure to account for gender roles in societal traditions—namely, matriarchal governance and land ownership—contributed to injustices against women. MIGA-supported negotiations for the Lihir mine, however, were carried out primarily with men. As a result of the mining development, women have become more dependent on men, lost much of the respect traditionally afforded to them, and are now at greater risk of becoming impoverished. Their traditional roles and responsibilities have

been marginalized as their community has become more dependent on the cash-based economy brought about by mining development. As one female community leader in Lihir put it: "Lihirians follow a matrilineal society in terms of landownership. Before the mine this system was well respected. But the mine came into operation on the island. Women were never given any space in areas of decision-making. We have little contribution or even nothing at all over land matters today. Our traditional way has lost its true meaning by the introduction of the mine" (WBG 2003). All of this is occurring in a context where women account for 70% of the poor in the area, and this proportion is growing (EIR 2003b).

### **Disclosure and Transparency**

An evaluation by the Operations Evaluation Unit of the World Bank found that one of the weakest overall areas in the implementation of safeguards among the projects reviewed for the EIR was public consultation and disclosure of environmental and social impacts (EIR 2003a). This failure to share information can exacerbate the exclusion and marginalization experienced by indigenous communities that may not speak the national language and/or have the same access to means of communication as dominant populations. The importance of appropriate consultation was acknowledged with respect to the Chad Cameroon Project, as discussed above. The EA studies note: "People did not always feel comfortable expressing themselves freely in the presence of armed gendarmes. The gendarmes were not always sensitive to the nature of the process, and it was felt they might have been a hindrance to the communications being encouraged" (Chad Export Project: Environmental Assessment, Executive Summary and Update, pp. 933).

Project-level requirements for disclosure of the significance of public corruption, political instability, and conflict is also a concern, as it is currently not systematically addressed by either MIGA or IFC (CAO 2003). In fact, the credit risk poor disclosure can generate for an investment is so significant that it has driven some private lenders, such as the Credit Suisse Group (2004), have begun adopting their own disclosure requirements for borrowers—simultaneously raising the bar of international good practice and putting pressure on the private sector to be proactive with their own social safeguard considerations.

### **Benefits Sharing**

Although assigning shares of project benefits to Indigenous Peoples is a highly commendable practice, it carries its own special set of difficulties. By awarding indigenous groups a minority percentage of project profits when a project is exploiting resources to which they have a legitimate claim, the project is effectively re-enforcing structural forms of discrimination in the name of "good practice." Such is also the case when projects take the view that the supplemental employment opportunities they generate



are benefits, for such reasons as the inherent risks opened by the labor markets (i.e., entry into cash economies) as discussed above. It should also be noted that arbitrary determinations of profit share only mask the imbalances of power and resources of institutions representing Indigenous Peoples and those representing other stakeholders and sectors.

### ***Management of Grievances***

The EIR received reports of alleged human rights violations associated with projects from across the industry, ranging from intimidation, torture, kidnapping, and detention to rape and killings, many of which were attributed to army and police forces. Furthermore, WBG Safeguard Policies were reported to lack any independent and generally agreed upon criteria to determine if a project is in substantial compliance of social policy requirements (EIR 2003a), although the recently updated IFC standards have mitigated this problem to a good extent.

These trends, in addition to the reality that incidents of human rights violations are mostly not compensated or even acknowledged by governments and courts in many countries, make it critical that private corporations establish effective grievance mechanisms. The absence of effective grievance mechanisms can exacerbate resentment and distrust and contribute towards a strong element of fear that currently exists among communities toward the extractive industries as a whole.

### **III. Current Best Practices**

Much of international law and best practice relates either to the roles of states and/or the public sector. Transnational corporations need to be aware of the complex legal context they typically encounter as they search for natural resources in territories traditionally occupied and/or used by Indigenous Peoples. This section looks at examples of good practice learned from a variety of projects that can be distilled into some general principles.

As discussed above, multilateral institutions have been developing policies promoting good practice. On 21 February 2006, the new Policy on Social and Environmental Sustainability of the IFC was approved and adopted by the WBG Boards of Directors, together with eight new Performance Standards to replace the general World Bank policies previously used.<sup>\*</sup> Performance Standard No.7 directly addresses Indigenous Peoples. Subsequently, on 1 July 2006 the “Equator Banks,” a group of about 40 financial institutions that together represent more than 80% of global project financing, adopted the IFC Performance Standards, which are to be applicable to any project they finance above the amount of USD 10 million<sup>\*\*</sup>. It is worth noting that the Equator Banks provided finance for USD 125 billion of direct foreign

investment in 2005, which amounts to around 80% of global private sector project financing.

The objectives of the IFC’s Performance Standard No. 7 include the fostering of “full respect for the dignity, human rights, aspiration, cultures, and natural resource-based livelihoods of Indigenous Peoples” and to “foster good faith negotiation with and informed participation of Indigenous Peoples when projects are to be located on the traditional or customary lands under use by Indigenous Peoples.” The associated Guidance Note 7 recognizes that although the rights of Indigenous Peoples are being addressed under relevant international law (such as ILO Convention 169), it is also expected that private sector companies conduct their affairs in a way that upholds these rights and does not interfere with states’ obligations under these instruments. Thus, “...in recognition of this emerging business environment, the IFC expects that private sector projects financed by IFC foster full respect for the dignity, aspiration, and culture of Indigenous Peoples as well as for their customary livelihoods” (IFC 2006b). Furthermore, it expects its clients to establish ongoing relationships throughout the life of the project and requires that sponsors engage in a process of free, prior, and informed consultation and participation (see below).

### ***The Right to Free Prior Informed Consent (FPIC) and Consultation***

In matters where States are involved, Indigenous Peoples have been given the right by contemporary international law to participate in decision-making and to give or withhold their consent to activities affecting their lands, territories, and resources. In 2006, the Human Rights Committee stressed the obligation of States to seek the informed consent of Indigenous Peoples before adopting decisions affecting them (HRC 2006). This has been backed up by several decisions of the Commission on the Elimination of Racial Discrimination in relation to subsoil resources located on traditional lands (CERD 2006).

The Final Report of the World Bank’s three year-long Extractive Industries Review concluded that (EIR 2003a):

“...where there is an unresolved conflict between indigenous peoples asserting rights over ancestral territories, and resources and a national government that in law or in practice fails to acknowledge the distinct identity of these peoples and their rights, the conflict needs to be resolved in a consensual way. Otherwise it will continue and will jeopardize the potential for development and poverty alleviation from the extractives sector. Structural reforms and legal codes that provide for automatic approval of exploration and development concessions on indigenous lands, territories and resources without the participation and the free prior and informed consent of these peoples and communities only exacerbate the problem.”

<sup>\*</sup> The New IFC policies are available at:

<http://www.ifc.org/ifcext/enviro.nsf/Content/EnvSocStandards>

<sup>\*\*</sup> see <http://www.equator-principles.com>

The EIR also stated that Indigenous Peoples have the right to participate in decision-making and to give their free, prior, and informed consent (FPIC) throughout each phase of a project cycle. This principle of FPIC is the principal determinant of whether there is a "social license to operate" and hence is a major tool for deciding upon whether to give support to an operation.

Whilst not strictly requiring consent, ILO 169 requires that States "establish or maintain procedures through which they consult these peoples" prior to engaging in or allowing resource exploitation so as to establish the extent to which the interests of Indigenous Peoples "would be prejudiced" (Article 15(2)). Other UN standards requiring free and informed consent are contained in the UN Declaration on the Rights of Indigenous Peoples, approved by the Human Rights Council in June 2006. This document asserts that Indigenous Peoples have the right to determine and develop priorities and strategies for the development and use of their lands and other resources and that states should consult and cooperate in good faith to achieve this (Article 3).

### *The Right of Free Prior and Informed Consultation*

Within the context of the private sector, a slightly different requirement has emerged, that of free, prior, and informed consultation. IFC Performance Standard No. 7 requires that IFC clients will conduct "free prior and informed consultation" with Indigenous Peoples and seek their informed participation and, for "high risk" projects or activities, enter into and successfully conclude good faith negotiations. Before presenting a project to its Board of Directors for approval, the Guidance Notes provide that the IFC shall determine that the client's community engagement involved free prior and informed consultation; that the process enabled the informed participation of Indigenous Peoples; and that the process led to broad community support for the project. High risk projects are defined as projects that (IFC 2006a, 2006b):

- may be on, or commercially develop, natural resources within, Indigenous Peoples' "traditional or customary lands under use, and adverse impacts can be expected on the livelihoods, cultural, ceremonial, or spiritual use that define the identity and community of the Indigenous Peoples." Customary use of land and resources refers to patterns of long-standing use, in accordance with Indigenous Peoples' customary laws, values, and traditions and may include cyclical and/or seasonal use rather than formal legal title to land and resources issued by the state
- may involve physical relocation and/or economic displacement
- may involve the use of cultural resources and traditional knowledge.

Thus, extractive industry projects are likely to be defined as high-risk and therefore would be expected to conduct at a

minimum free prior and informed consultation for any projects to be funded by the IFC or Equator Banks.

Although there is no definition of the term "good faith negotiation," the Guidance Notes explain that at a minimum it would comprise the following components (IFC 2006b):

- a willingness to engage in a process and availability to meet at reasonable times and frequency;
- provision of information necessary for informed negotiation;
- exploration of key issues;
- mutually acceptable procedures for negotiation;
- willingness to change initial positions and to modify offers where possible; and
- provision of sufficient time for decision-making.

Whilst there is no definition of a successful outcome of the good faith negotiations in Performance Standard No. 7, it would seem logical that the negotiation would have to result in some form of agreement, even though the term "consent" is not used. This approach is supported by the UN Centre for Transnational Corporations (TNCs) in a series of reports that have examined the investments of TNCs in indigenous territories (ESC 1994a). The fourth and final report concluded that the performance of a TNC was chiefly determined by the quantity and quality of Indigenous Peoples' participation in decision-making and the extent to which the laws of the host country give Indigenous Peoples the right to withhold consent to development (ESC 1994b).

Groups representing the extractive industries such as the International Petroleum Industry Environmental Conservation Association and the International Association of Oil and Gas Producers have also recognized the importance "for communities to be able to give free and informed consent" (OGP SIA Task Force 2002). The 2006 draft Position Statement on Mining and Indigenous Peoples Issues of the International Council on Mining and Metals provides that (ICMM 2006):

"ICMM members shall seek to gain and maintain broad community support for their activities throughout the project cycle by developing relationships with Indigenous Peoples based on their identified interests and the project impacts, which may include:

- seeking consent for activities. For example, where Indigenous Peoples have formal title to the affected land, or are owners of recognized legal interests in land or resources they must, at least, be afforded the same right as any other land owner
- negotiating agreements, such as for access and benefit sharing, participation, land use, etc. to specify the processes, roles, and outcomes which form the basis of a relationship."

Thus good practice involves the willingness and adequate resources to engage in an appropriate dialogue to facilitate indigenous communities' understanding of the full implications of resource use and their ability to make a collective assessment.

### ***Being Aware and Sensitive to Other World Views***

As discussed above, Indigenous Peoples have their own specific customs, cultural values, and worldviews. These need to be taken into consideration when interacting with indigenous communities. For example, Indigenous Peoples see, land is not just as property that can be bought and sold as a commodity but rather it is 'Mother Earth', sacred and communal. When their land is gone, so is the basis for their existence as distinct peoples. Indigenous Peoples view themselves as entitled to, and able to, manage their ancestral lands and resources. In order to commence the relationship with Indigenous Communities on a good footing and to then develop it so as to be mutually advantageous, respect for the land and Indigenous Peoples' role in its managements needs to be shown and taken into consideration in all activities. Thus just giving material compensation for the use of land may well not be appropriate nor satisfy the Indigenous community.

Furthermore, while indigenous communities may want to reduce the poverty under which they live and increase their opportunities for economic development, they are unwilling to do so at the cost of losing their own cultures.<sup>16</sup> Thus, companies need to adapt their approaches to compensation and the acquisition of a social license to operate to the particular conditions of indigenous communities. It is essential to recognize that:

- the concept of reciprocity exists among Indigenous Peoples
- Indigenous Peoples work communally when placing value on goods
- Indigenous Peoples often refrain from accumulating goods
- Indigenous Peoples typically live in harmony with their natural environment.

This runs counter to modern definitions of economic prosperity as equaling personal economic growth and accumulation. Indigenous Peoples are accustomed to distributing wealth so that the community benefits as a whole. However, understanding this, means that a different approach needs to be adopted when seeking to provide development opportunities for Indigenous Peoples as a component of a larger project.

An understanding of the different ways in which Indigenous Peoples are relate to each other will also help avoid conflicts.

### ***Participation and Collaboration***

Whilst the importance of both social capital (the institutions, relationships, networks and norms that shape and the quality and quantity of a society's interactions)<sup>17</sup> and the importance of participation have long been recognized as important for the development process in general, they have often not been applied for Indigenous Peoples. In just the same way as it is now considered to be accepted good practice to involve project affected people in project design and implementation, Indigenous Peoples who are affected, also need to be involved.<sup>18</sup> Thus Project designs should systematically incorporate participatory mechanisms tailored to the specific political, social and cultural contexts of Indigenous Organizations and communities. A participatory approach will also help to avoid the exclusion of beneficiaries and their representatives. This will more often than require the skills and experience of an expert. Companies should not try and manage these issues alone but rather seek out the expertise of a specialist and this needs to be recognized and resources made available.

### ***"Auto-Gestion"***

Auto-Gestion is a concept that developed in Latin America and can be translated as self-management. However, it does not refer to self-management of a particular detail but rather it implies a self-management of a total transformation that extends to every aspect of life. Thus for any benefits to be derived from a Project to contribute to the sustainable development of indigenous communities in a way that is appropriate, there needs to be a component of capacity building included within the overall design and compensations/benefits sharing process<sup>19</sup>. This could comprise of any one or all of the following: capacity building of Indigenous organizations to interact with non-indigenous organizations, capacity building related to identifying needs and selecting priorities, relevant specific skills training, natural resource management, financial management.

### ***Contributing Towards Increasing Human Capital***

As referred to at the beginning of this paper, Indigenous Peoples have not and still frequently do not have the same levels of access as other sections of the population to

<sup>17</sup> Putnam R., Leonardi R., Nannetti, R., 1993. Making Democracy Work – Civic Traditions of Modern Italy.

<sup>18</sup> see: Uquillas, J and M. Van Nieuwkoop. 2003. Social capital as a Factor of Indigenous Development in Ecuador. *Latin America and Caribbean Region, Sustainable Development Working Paper* (No. 15). See also: Uquillas, J. 2004. The Indigenous and Afro-Ecuadorian Peoples Development Project (PRODEPINE 1). In *Lessons of Indigenous Development in Latin America: The Proceedings of a World Bank Group Workshop in Indigenous Peoples Development*. Washington D.C.: World Bank.

<sup>19</sup> see: Uquillas, J.E, and M.A. Eltz. 2004. The Quest and Practice of Indigenous Development. In *Lessons of Indigenous Development in Latin America: The Proceedings of a World Bank Group Workshop in Indigenous Peoples Development*. Washington D.C.:World Bank

<sup>16</sup> see: Uquillas, J.E, and M.A. Eltz. 2004. The Quest and Practice of Indigenous Development. In *Lessons of Indigenous Development in Latin America: The Proceedings of a World Bank Group Workshop in Indigenous Peoples Development*. Washington D.C.:World Bank.

education. This will inevitably mean that their access to training and/or employment opportunities will be similarly limited and/or restricted. Companies need to be aware of this and the potential for ensuing hostility and resentment. Whilst private companies cannot of course correct the inequities of the past in this respect they will gain a great deal of goodwill if they make some steps to enable Indigenous Peoples to be eligible for these opportunities by either providing additional training or being creative in their identification of local economic or employment opportunities. Companies can also contribute towards the resources of national/local courses currently in place to train local populations in the skills of participatory planning, project administration and management and appropriate technical issues. This would not only contribute to the sustainable increase of human capital but also create a sound basis for developing the relationship between companies and indigenous Peoples to their mutual advantage.

### *Transparency*

As discussed above, a lack of transparency has often exacerbated already poor relationships with indigenous communities. Transparent grievance mechanisms that are easily accessible and culturally appropriate will help create the grounds for a good working relationship. They can help reduce the deep resentment, distrust, and fear that are currently felt in many communities towards the extractive industries as a whole.

In summary, good practice is based on respect, transparency, participation, intercultural understanding, and the sharing of benefits, as well as the recognition that this may require the expertise of a specialist.

## **IV. Attempting Best Practice: From Public Protest to Public Partnership on Sakhalin**

Sakhalin II, the LNG and oil extraction project of Shell Oil and its Japanese co-shareholders (and recently of Russia's state oil company Gazprom), has made major headlines often over the past few years. This is the Russian Federation's largest foreign investment project to date—and initially was of the value of US\$12 billion and has now increased to over US\$20 billion. The Project has been the target of much bad publicity relating to several environmental and social issues. These included accusations of river crossings that were anticipated to harm fish runs, as well as an offshore platform construction that would harm the Pacific Grey Whales and other sea mammals. In addition many were concerned that the onshore pipeline and plant construction would irreparably alter the lands and livelihoods of the inhabitants of Sakhalin Island to the detriment of indigenous and non-indigenous alike. In January of 2005, public protests by members of Sakhalin's indigenous communities against Sakhalin Energy garnered much local, national and international coverage. However over the last two years, nearly all negative criticism concerning Indigenous Peoples and their interests on the island by Sakhalin Energy have ceased. Why? This paper

seeks to explain why this has been the case and to suggest a model that can be used and adapted by other oil corporations.

Before describing the innovative approach, it is worthwhile to describe the specific situation and environment of Indigenous Peoples both in the Russian Federation and on the island of Sakhalin. The Indigenous Peoples ("Small Peoples of the North" in Russian parlance) on the Island are comprised of four ethnic groups: the Nivkh, Uilta, Evenk, and Nanaity. The fishing and sea mammal-hunting Nivkh were once the dominant group on the island, before the arrival of Russians and others in increasing numbers in the 19th century. The Soviet era brought great changes in the 20th century, not the least of which was the forced resettlement out of their compact villages into today's multi-ethnic towns and cities. Now only 3500 strong all four groups combined out of a total population of over one-half million, Sakhalin's Indigenous Peoples have seen great cultural and social losses over the years. Post-Soviet times have only worsened their lot as the state subsidies they had grown dependent on evaporated. With the arrival of foreign oil companies in the 1990s, the indigenous leadership on the island determined that they had to make a stand to demand their just compensation for the use of their traditional lands and for perceived threats against their subsistence resources. The January 2005 protest was the crest of that public outcry against the oil companies, but the oil companies didn't seem to be responding..

Then Sakhalin Energy Investment Company (SEIC) devised a new approach. Prior to 2005, it had specifically recognized potential and actual project impacts on indigenous territories, but only for a small section of the population, primarily the reindeer herders. The company deserves credit for its outreach efforts to these herders (less than 100 in number). This included direct compensation payments and regular consultations (Mitrofanin 2006; Roon 2006). However, indigenous spokespersons considered this effort to be tokenism at best, and they decried the company for ignoring its key demands for 1) an 'ethnological expertiza'<sup>20</sup> that would result in a calculation of compensatory damages claimed and 2) for a Indigenous Peoples Development Fund that would spend the monies paid as such compensation.

When the winter protests of 2005-2006 took place, adverse publicity and pressure from the projects' potential international lenders<sup>21</sup> caused the company to reconsider its approach. SEIC appointed an Indigenous Peoples Coordinator (a Russian national) and allocated a budget of US\$30,000 per year to fund various indigenous-related activities, including the afore-mentioned support to herders. Most importantly, the company finally yielded to the requirement of the lenders' consortium that it prepare an Indigenous Peoples Development

<sup>20</sup> This is an impact assessment review; it was demanded by the islands' indigenous communities to parallel the environmental expertiza, but it was not required under draft legislation before the national and regional legislatures as was the environmental expertiza.

<sup>21</sup> At that time these included the European Bank for Reconstruction and Development Export Credits Guarantee Department, ExIm Bank, and the Japanese Bank for International Cooperation.

Plan (IPDP) according to World Bank standards. The lenders had pressed for such an internationally recognized approach for a year or two but the company had resisted, only to see its problems with Indigenous Peoples mount. With the corporate decision to at long last concur with the lenders' advice, in May of that year, the Company brought in as advisor to guide the IPDP an international social scientist (ISS) with substantial expertise on planning and implementing such development plans.

### **Engagement: Facilitation, Neutrality, Giving Voice**

Upon arrival on the island, the ISS met with SEIC management and advised a policy of direct, open, and collaborative engagement with the representatives of the island's nearly 4,000 Indigenous Peoples. With some foresight, management agreed to allow their Indigenous Peoples Coordinator to work closely with the ISS on a new approach. This new approach emphasized:

- the ISS acting as a facilitator between the Company and Indigenous Peoples
- agreement by the Company agreeing to share real decision-making authority with the Indigenous Peoples
- transparency of interactions and decisions
- a stance of neutrality to be adopted and maintained by the Company in intra-indigenous community disputes, conflicts, and rivalries.

Rather than refute previous claims of damage, the new approach solicited all grievances that any indigenous group or individual chose to level at the company. Within two months, this produced a comprehensive list of potential and claimed damages. Thus, the universe of claims was delimited and converted into a mitigation matrix that enabled Indigenous Peoples to see that their issues were being treated seriously and allowed the company to respond systematically to each community concern. Over the next year, a committee of company and indigenous representatives worked through each claim, dismissing some, accepting responsibility for others, assigning some for further investigation, and agreeing to disagree on still others.

In addition to pledging to deal responsibly with all mitigation issues, the Company also pledged to provide social benefits as part of the IPDP. The Company declared that all Indigenous Minorities on the island, not just those in the immediately affected communities or districts, would be eligible for the benefits. This step, in particular, won the company much goodwill because it didn't have to be so generous, if adopting a strict interpretation of the international requirements. However taking into consideration the particular circumstances of the Indigenous Minorities on the island of Sakhalin, this was an approach that reduced the likelihood of intra-community conflict. Community consultations were subsequently held throughout the island to give direction to those preparing the Plan.

### ***Consultation as Participation: Power-sharing as the Basis for Partnership***

SEIC also established a "Working Group" composed of 4 company representatives (staff or their consultants) and 4 indigenous representatives. In addition, two committees were set up. One had the remit of economic/environmental issues and the other focused on social issues. These committees comprised approximately equal numbers of company and indigenous representatives along with some government attendees. Key to this organizational structure was the approach of the Company team that the content and structure of the IPDP was essentially the business of the Indigenous Peoples of the island, as it was their respective futures and present needs that the Plan would address. Thus SEIC representatives on the Working Group turned to the Working Group (which included the head of the indigenous council on the island as well as the indigenous representative to the regional governmental legislature) rather than prejudge or influence beforehand how the decision-making process. After nearly a year of work, the Working Group and Committees developed an outline of a Plan (dubbed according to indigenous preference, the Sakhalin Indigenous Minorities Development Plan) that reflected the Indigenous Peoples' communities' interests in development: i.e., not just social benefits like education and health. Nearly 50% of funds were to be reserved for the support for "traditional economic activities" such as fishing, hunting, reindeer herding, and wild plant gathering.

### ***Power-sharing as the Basis for Partnership: Overcoming Company Resistance***

Not everyone at SEIC was as enthusiastic about this approach to shared decision-making as the key managers and the Indigenous Peoples team. A legacy of corporate secretiveness; Russian racism towards the four indigenous groups of Sakhalin; and bureaucratic rigidity contributed to an often bumpy road towards the Plan's launch. On more than one occasion, the Indigenous Peoples Coordinator needed to have a more senior manager intervene to bend company rules to allow "special procedures" to accommodate indigenous needs or requests.

Sometimes the conflicts were simply a matter of differing ways of approaching problems. Corporate culture worships paper and written reporting while the indigenous cultures of the island treasure talking about problems and human interactions as the way to solve disagreements. Furthermore their culture involves a consensus-seeking approach to solving issues, where time is needed. This proved difficult in a culture of a corporation where time is often of the essence. Given so many actual and potential points of conflict, the manager overseeing the Indigenous Peoples efforts ring-fenced the Indigenous Peoples unit and intervened as necessary with other company departments. This worked well and allowed the IP-related staff and consultants to operate effectively with their external interlocutors.

It worked well, that is, until the Indigenous Peoples affairs manager left the company at the time of the Plan launch. New managers, somewhat less bold perhaps and significantly less committed to indigenous affairs, have been less willing to spend the time and internal corporate political capital to help the company accommodate the needs of the SIMDP. In retrospect, some broadening of the internal support base would have been prudent.

### ***Community Consultations***

Beginning with a round of visits to indigenous communities around the island during the summer of 2005, three formal visits were made to each of the major communities in less than a year's time to inform them of the SIMDP preparation process and to solicit their input. The results of these consultations were tabulated and summarized for the Working Group and its committees and were used to set the broad directions of the plan contents. Regular meetings were also held with the island's representative Indigenous Peoples' council, which was asked to comment on the emerging SIMDP and to provide concrete suggestions and support for its development. This direct accessing of an island-wide group attempted to ensure that the Company's contacts with Working Group or committee members from the indigenous communities did not overly privilege the elites with some with insider knowledge of Plan arrangements or access to benefits.

Perhaps just as significant as the frequency and breadth of contacts was their personal nature. Knowing that Indigenous Peoples on the island did indeed treasure the personal and the immediate over the formal and the at a distance social and communication styles, the SEIC IP team members, together with the Lenders, established friendly and informal ties with their key indigenous counterparts. This involved exchanging frequent mobile phone calls, visiting each other, and exchanging hospitality. This enabled the IP team to work with the Working Group and its committee members as working colleagues and enabled the team to deal with issues as they arose; they never had to read about problems in the media to know what their counterparts were thinking or doing.

Of course, there were and are potential downsides of such involvement. For one, you have to identify company staff willing to invest the time and emotional space to work so closely with their indigenous counterparts. When the company had or has such people involved, things go well; when they are scarcer, indigenous estrangement begins to creep back.

Another potential pitfall is the over-engagement of company staff and consultants in indigenous affairs. As with many indigenous groups worldwide who live in small communities, factionalism along family/clan and locality lines is rife on the island, and the unwary outsider can become enmeshed in such rivalries to the detriment of their effective functioning and that of the indigenous program they are trying to advance. An important company principle must be neutrality in indigenous affairs, i.e., the company does not interfere in rivalries and conflicts internal to the community.

This is a difficult guideline to implement; both indigenous and company co-workers and friends naturally make alliances and want to support and defend friends against others.

### ***Third Leg of the Stool: Wooing the Government***

Of all the components necessary for the successful launch and implementation of the SIMDP, the company was weakest in establishing early government involvement in plan design and preparation. This evolved primarily out of the somewhat combative state of relations with the regional government, which was at times collaborative and at times antagonistic. The Working Group and its committees were intended to be staffed as well by fully participating government representatives as well as corporate and indigenous ones, but this did not happen, and made the months preparing for the plan go somewhat more arduous than they should have been. Nonetheless, when the government realized that the company was indeed serious about funding a major program for the island's Indigenous Peoples, its attitude changed. Now ensuring that government representatives are not overly influential on Plan implementation decisions has arisen as a *sub rosa* issue.

### ***Plan Launch***

When the SIMDP was launched in May of 2006, after a year's preparation, it was highly praised, not only by the company but also by the regional government, Indigenous Peoples on the island and in the national indigenous federation (RAIPON), and representatives of multilateral banks and the international community. The Company Deputy CEO, the regional Vice-Governor, and the head of the Indigenous People Council all stood on the dais and joined hands in celebration of their joint achievement. The next task has been to implement their hard-won agreements.

## **V A Strategy for Partnerships**

### ***Respecting Power***

*Throughout my career in Shell, I have had good and bad experiences in my engagements with groups and individuals who are critical. The good experiences usually resulted from situations where we were prepared to listen to each other. We were able to establish mutual respect, agree on broad shared goals, even agree to disagree - but in the end to achieve a win-win outcome.*

Jeroen van der Veer, Chief Executive  
Email message to Shell employees  
10 May 2007

Oil company executives, if they really understand how to advance their business objectives, know what makes for good partnerships, at least among their industry peers and others in their globalized and corporatized world. Do these assumptions

carry over well when working with Indigenous Peoples? This can be answered in both the affirmative and negative.

Of the two key elements in successful oil industry and indigenous interactions, Mr. van der Veer identified one of these key features precisely in his internal company message of May 2007. Establishing an atmosphere and relationship of mutual respect is critical and reflects a pan-human desire for recognition on the individual and group levels. More than any other factor, showing respect to Indigenous Peoples is the one thing that is most appreciated in corporate-indigenous interactions, surpassing even benefits or compensation levels as a predictor of satisfactory relationships.

Respect can be shown by *both* words and deeds. Words, both spoken face-to-face and in the literature of company documents, should be chosen so as refer to interlocutors in the ways they prefer. With respect to deeds, promises should not be made unless they can be delivered. One practical way to show respect for indigenous words is to take seriously their claims for potential or actualized damage. This can be achieved by establishing a joint working group with the objective of identifying each claim and resolving them one by one. In the end, all might not be resolved, but the process should establish trust and a good working relationship for future cooperation.

Implicit in this approach for a company, moreover, is a willingness to share meaningful decision-making with partners. Without this latter point, there can be no real “partnering.” The basis on which a partnership ought to be based is that of sharing power in a meaningful manner with one’s partner. Given the immense power differential between an international corporation and a local indigenous community, without a corporate decision to voluntarily yield some decision-making authority, promises of partnership will eventually ring hollow.

### *A Separate Corporate Space*

Such advice is not easily received by corporate ears. However, the hard experience of the extractive industry and its indigenous antagonists has shown how contentious operations can become without true collaboration. This does not mean allowing indigenous communities to have a veto power over company decisions or free rein in projects. It means deciding that both a petroleum company and an indigenous community can jointly co-decide and possibly co-manage some aspects of their common business. Given some real decision making authority and some real ability to affect the changes that the oil company is bringing into their lives, most communities will respond quite positively.

A two-stage strategy, or better yet, two tier (simultaneous) strategy would be aimed at developing both indigenous partners outside the company on the one hand, and corporate partners inside the company on the other. The willing collaboration of both is critical to partnership success.

Corporate partners might take some convincing. Key elements of an atypical but successful stakeholder engagement strategy which has garnered kudos from the Indigenous Peoples themselves include:

- Including a meaningful composition of Indigenous Peoples development plan governance bodies with Indigenous Peoples’ representatives
- restraining company social/community development specialists from imposing “sustainable development” criteria on indigenous benefits choices
- allowing indigenous representatives to co-select with HR and management new company staff members who will be responsible for indigenous affairs in the company
- inviting government representatives onto plan governance bodies in a minority proportion similar to that of the company itself
- adjusting company administrative or bureaucratic rules to take account of the realities of indigenous communities and their respective cultures
- giving indigenous representatives total and final control over a portion of the indigenous development plan or program

To the indigenous participants, all this spells respect for them and they return the favor by co-operating with the Company for actions that stand out so much in today’s world. Management needs to proactively interact with other company players to first establish and then protect a separate company “space” to allow such heterodox actions and approaches to be carried out.

## **VI Conclusion and Way Forward**

The last few decades have witnessed a rapid development both in the search for ever more remote energy sources and in the political consciousness and savvy of the people living in the areas of those “remote” areas of energy extraction. “Remote” of course should be placed in quotation marks so as to remind ourselves that from the indigenous points of view, the corporate headquarters of London, Houston, the Hague, or Jakarta are equally remote from the indigenous heartlands. This remoteness is not only geographical in nature but also cultural, relating to values, behavior, and aspirations. For this reason we have argued above that an approach which does not privilege one group of stakeholders over another but which approaches all as equally worthy of a place at the project negotiation table (a corporate metaphor) stands a good chance of long-term mutual success.

Both the corporate and indigenous worlds have an opportunity to learn from each other. On Sakhalin, by loading the SIMDP indigenous development plan’s Supervisory Board and committees with indigenous minorities, an interesting dynamic has emerged. Sometimes, when the positions towards a specific issue of the company and the indigenous representatives have diverged and it was clear that the indigenous representatives “had the votes” if they had only

chosen to cast them, the indigenous members chose to postpone the decision. A few weeks or months might then pass while both sides worked out an agreement acceptable to both sides. Thus by placing indigenous minorities as majorities on all governance bodies, the company forced itself to work by consensus, a culturally atypical approach for it.

Learning to respect the differences thus means doing business in somewhat new ways. For both indigenous communities and corporations, there is much to learn and much to gain. With billions of dollars in corporate investment and the lives, livelihoods, and cultures of many Indigenous Peoples at stake over the next few decades as humanity struggles to find the balance between energy supplies and sustainable lifestyles, this intersection between oil operators and indigenous communities will only increase in strategic importance.

We all have much to benefit from developing new and mutually beneficial ways of interaction and co-existence – corporations, multi-lateral development financial institutions and of course indigenous communities. To build rapport with indigenous communities and their representative organizations, both locally and globally, new ways of interacting and working, involving respect, transparency, participation and partnership, need to be implemented. This will demonstrate sincerity and increase the potential for beneficial outcomes for all.

## References Cited:

- Batstone, Roger with Ramachandra Jammi. 2003. Evaluation Of The World Bank Group's Activities In The Extractive Industries: Background Paper—Review of Implementation of Safeguard Policies of World Bank Extractive Industries Projects. Operations Evaluation Department, World Bank.
- Brundtland, Gro Harlem 1999. International Consultation on the Health of Indigenous Peoples. Speech transcript of the World Health Organization, Geneva (23 November 1999). [http://www.who.int/director-general/speeches/1999/english/19991123\\_indigenous\\_people.html](http://www.who.int/director-general/speeches/1999/english/19991123_indigenous_people.html). Downloaded 15 May 2007.
- Cameroon Environmental Defense Fund. 1999. The Chad Cameroon Oil and Pipeline Project: Putting People and the Environment at Risk. A report of the Association Tchadienne pour la Promotion et la Defense des Droits de l'Homme, Chad Centre pour l'Environnement et le Developpement, Cameroon Environmental Defense Fund, U.S.A. [www.environmentaldefense.org/pdf.cfm?ContentID=728&FileName=ChadCameroon\\_pipeline.pdf](http://www.environmentaldefense.org/pdf.cfm?ContentID=728&FileName=ChadCameroon_pipeline.pdf). Downloaded 15 May 2007.
- Caruso, Colchester, MacKay, Hildyard, and Nettlet (eds.). 2003. Extracting Promises: Indigenous Peoples, Extractive Industries and the World Bank. Tebtebba Foundation and Forest Peoples Programme: Capitol Publishing House: Manila. p. 9. [http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContaine r.nsf/All+Documents/85256D240074B56385256FF6006E5E7A/\\$File/volume6indigenous.pdf](http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContaine r.nsf/All+Documents/85256D240074B56385256FF6006E5E7A/$File/volume6indigenous.pdf). Downloaded 15 May 2007.
- Chan. Wing Kei. 2005. Lessons Unlearned: Laos the New Test Subject as World Bank Resumes Funding for High-Risk Dam. *50 Years Is Enough*, 8(2). <http://www.50years.org/cms/ejn/story/261>. Downloaded 15 May 2007.
- Committee on the Elimination of Racial Discrimination. 2006. Concluding Observations by the Committee on the Elimination of Racial Discrimination: Ecuador. [CERD/C/62/CO/2, 21 March 2003] International Convention on the Elimination of All Forms of Racial Discrimination (3-21 March 2003). [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.62.CO.2.E n?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.62.CO.2.E n?Opendocument). Downloaded 15 May 2007.
- Compliance Advisor Ombudsman. 2003. Extracting Sustainable Advantage? A review of how sustainability issues have been dealt with in recent IFC & MIGA extractive industries projects. (Final Report.) p. v. <http://www.cao-ombudsman.org/html-english/documents/FINALExtractiveIndustriesReviewReport.pdf>. Downloaded 15 May 2007.
- Convention on Biological Diversity (2004) Decision VII/28 Protected Areas. In, Decisions Adopted by the Conference of Parties to the Convention on Biological Diversity at its Seventh Meeting. [UNEP/BDP/COP/7/21] <http://biodiv.org/doc/decisions/COP-07-dec-en.pdf>. Downloaded 15 May 2007.
- Credit Suisse Group. 2004. Sustainability Reporting: Indicators And Key Figures. [http://www.csg\\_social\\_performance\\_indicators\\_en.pdf](http://www.csg_social_performance_indicators_en.pdf). Downloaded 15 May 2007.
- Davis, Gloria. 2004. A History of the Social Development Network in the World Bank, 1973 – 2002 [Paper No. 56]. *Social Development Papers*. Social Development Family, Environmentally and Socially Sustainable Development Network. Washington DC: World Bank. pp. 10-26
- Dams and Development Project Secretariat, United Nations. 2007. Nam Theun 2 Hydroelectric Project. United Nations Environment Programme Dams and Development Project. [http://www.unep.org/dams/documents/ell.asp?story\\_id=128](http://www.unep.org/dams/documents/ell.asp?story_id=128). Downloaded 15 May 2007.
- Daes, Erica-Irene. 2001. Prevention Of Discrimination And Protection Of Indigenous Peoples And Minorities. Working Paper on Discrimination Against Indigenous Peoples by the Chairperson-Rapporteur of the Working Groups on Indigenous Populations, in accordance with Sub-commission resolution 1999/20 Economic and Social Council, United Nations [E/CN.4/Sub.2/2001/2, 18 August 2001]. <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/12158c69b2bb a560c1256a57002ee573>
- Dennis, Suzanna and Elaine Zuckerman. 2006. Gender Guide to World Bank and IMF Policy-Based Lending. Gender Action: <http://www.genderaction.org/images/GA%20Gender%20Guide%20to%20World%20Bank%20and%20IMF%20FINAL.pdf>. Downloaded 15 May 2007.



- Downing, Theodore and Jerry Moles, Ian McIntosh, and Carmen Garcia-Downing. 2002. Indigenous Peoples and Mining Encounters: Strategies and Tactics. For the *Minerals, Mining and Sustainable Development Project*. International Institute for Environment and Development and World Business Council: London.  
<http://www.ted-downing.com/Publications/Indigenous%20peoples%20and%20mining%20encounters.pdf>. Downloaded 15 May 2007.
- Economic and Social Council, United Nations. 1994a. Discrimination Against Indigenous Peoples: Transnational investments and operations on the lands of indigenous peoples [E/CN.4/Sub.2/1994/40] Commission On Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. United Nations. (15 June 1994).  
<http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/99e2c75ca19e564680256761004c0562?Opendocument>. Downloaded 15 May 2007.
- Economic and Social Council. United Nations. 1994b. Discrimination Against Indigenous Peoples: Transnational investments and operations on the lands of indigenous peoples (Report of the Centre on Transnational Corporations submitted pursuant to Sub-Commission resolution 1990/26). [E/CN.4/Sub.2/1994/40]. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. (15 June 1994)  
<http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/99e2c75ca19e564680256761004c0562?Opendocument>. Downloaded 15 May 2007.
- Environment and Social Development Department, International Finance Corporation. 2006. Lessons of Experience [Number 1]: External Monitoring of the Chad-Cameroon Pipeline Project. Washington, D.C.: World Bank Group
- Esso Exploration and Production Chad Inc. 2006. Chad/Cameroon Development Project: Project Update No. 21 [Annual Report]. Submitted on behalf of the Tchad Oil Transportation Company S.A. and the Cameroon Oil Transportation Company S.A. [www.esso Chad.com/Chad-English/PA/Files/21\\_ch1.pdf](http://www.esso Chad.com/Chad-English/PA/Files/21_ch1.pdf). Downloaded 15 May 2007.
- Extractive Industries Review, World Bank Group. 2003. Striking a Better Balance [Volume I]: the World Bank Group and the extractive industries (Final Report). Jakarta & Washington DC: World Bank Group. pp. 2-43
- Extractive Industries Review, World Bank Group. 2003. Striking a Better Balance Volume II: converging issues and diverging views on the world bank group's involvement in extractive industries (Final Report). Jakarta & Washington DC: World Bank Group. p. 30
- Extractive Industries Review, World Bank Group. 2003. Striking a Better Balance Volume III: annexes (Final Report). Jakarta & Washington DC: World Bank Group. pp. 2-3
- Forest People's Programme. 2003. A Case Study on Indigenous People, Extractive Industries and the World Bank: Papua New Guinea. Presented at the workshop on "Indigenous Peoples, the Extractive Industries and the World Bank" held at Exeter College in the University of Oxford, UK (14-15 April 2003)
- Forest Peoples Programme and Tebtebba Foundation. 2006. Indigenous Peoples' Rights, Extractive Industries and Transnational and Other Business Enterprises: A Submission to the Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises.  
<http://www.business-humanrights.org/Documents/Forest-Peoples-Tebtebba-submission-to-SRSG-re-indigenous-rights-29-Dec-2006.pdf>. Downloaded 15 May 2007.
- Gatsiounis, Ioannis. 2006. Dam project brings Laos cash and controversy. International Herald Tribune (15 March 2006).  
<http://www.ihf.com/articles/2006/03/15/news/rcorpdam.php>
- Gualinga, Carlos Viteri. 2004. Gender and Development Projects in Indigenous Communities in Lessons of Indigenous Development in Latin America. Proceedings of a World Bank Workshop on Indigenous Peoples Development, (September 2004).
- Human Rights Committee, United Nations. 2006. Consideration of reports submitted by state parties under article 40 of the Covenant: concluding observations of the Human Rights Committee. [CCPR/C/CAN/CO/5 20 April 2006]. New York: United Nations.  
[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf). Downloaded 15 May 2007.
- Indian Energy Solutions 2003. Council of Energy Resource Tribes, Denver, Colorado.  
[http://www.certreearth.com/Rports/report\\_03.pdf](http://www.certreearth.com/Rports/report_03.pdf). Downloaded 15 May 2007.
- International Council on Mining & Metals. 2006. Draft Position Statement: Mining and Indigenous Peoples issues. London: ICMM.  
[http://www.icmm.com/news/1054Drafthighlevelpositionstatement\\_FINAL.pdf](http://www.icmm.com/news/1054Drafthighlevelpositionstatement_FINAL.pdf). Downloaded 15 May 2007.
- International Finance Corporation. 2006a. Performance Standard 7: Indigenous Peoples. *Environment and Social Development » Environmental and Social Standards » Performance Standards* [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol\\_PerformanceStandards2006\\_PS7/\\$FILE/PS\\_7\\_IndigenousPeoples.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS7/$FILE/PS_7_IndigenousPeoples.pdf). Downloaded 15 May 2007.
- International Finance Corporation. 2006b. Guidance Note 7: Indigenous Peoples. *Environment and Social Development » Environmental and Social Standards » Guidance Notes* [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol\\_GuidanceNote\\_7/\\$FILE/GuidanceNote7.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_GuidanceNote_7/$FILE/GuidanceNote7.pdf). Downloaded 15 May 2007.
- Juma, Calestous [Executive Secretary]. 1997. Traditional Knowledge and Biological Diversity [UNEP/CBD/TKBD/1/2, 18 October 1997]. Workshop on Traditional Knowledge and Biological Diversity, Madrid, Spain (24-28 November 1997). p. 23.  
<http://www.cbd.int/doc/meetings/tk/wstkbd-01/official/wstkbd-01-02-en.pdf>. Downloaded 15 May 2007.
- Lang, Chris. 2005. Laos: World Bank finances the Nam Theun 2 dam regardless of its own policies. *World Rainforest Movement Bulletin* 93. <http://www.wrm.org.uy/bulletin/93/Asia.html#laos>. Downloaded 19 July 2007.
- Lawrence, Shannon. 2007. Nam Theun 2 Trip Report and Project Update. Berkeley: International Rivers Network.  
[http://www.irn.org/pdf/namtheun/NT2TripReport2007\\_full.pdf](http://www.irn.org/pdf/namtheun/NT2TripReport2007_full.pdf)

- MacKay, Fergus. 2002. A Guide to Indigenous Peoples' Rights in the International Labour Organization. Moreton-in-Marsh: Forest Peoples Programme.  
[http://www.forestpeoples.org/documents/law\\_hr/ilo\\_guide\\_ip\\_rights\\_jul02\\_eng.pdf](http://www.forestpeoples.org/documents/law_hr/ilo_guide_ip_rights_jul02_eng.pdf). Downloaded 15 May 2007.
- Mathrani, Sunil. 2002. Project Performance Assessment Report: Papua New Guinea Petroleum Exploration Technical Assistance Project (Credit 1279-Png) Petroleum Exploration and Development Technical Assistance Project (Loan 3670-PNG). Sector and Thematic Evaluation Group, Operations Evaluation Department, World Bank.  
[http://Inweb18.worldbank.org/oed/oeddoelib.nsf/DocUNIDViewForJavaSearch/034A5BB5E20C995885256D01007ADECf/\\$file/PPAR\\_24405.pdf](http://Inweb18.worldbank.org/oed/oeddoelib.nsf/DocUNIDViewForJavaSearch/034A5BB5E20C995885256D01007ADECf/$file/PPAR_24405.pdf). Downloaded 04 June 2007.
- OGP Social Impact Assessment Task Force. 2002. Key Questions in Managing Social Issues in Oil and Gas Projects [Report No. 2.85/332]. International Petroleum Industry Environmental Conservation Association / International Association of Oil & Gas Producers.  
[http://www.ipieca.org/downloads/social/impact\\_assessment.pdf](http://www.ipieca.org/downloads/social/impact_assessment.pdf). Downloaded 15 May 2007.
- Operations Evaluation Department. 2003. Implementation of Operational Directive 4.2 on Indigenous Peoples: An Evaluation of Results [Report No. 25754; 10 April 2003]. Washington D.C.: World Bank.  
<http://Inweb18.worldbank.org/servlet/OEDSearchServlet?SearchType=byText&PerPage=20&DbURL=oed/oeddoelib.nsf&Form=OEDSearch&SearchText=25754>. Downloaded 15 May 2007.
- Scudder, Thayer and Lee M. Talbot. 2004. Seventh Report of the International Environmental And Social Panel Of Experts: For the Nam Theun 2 Hydro Project, Lao People's Democratic Republic [POE Report #7 REV 5, Vol. 21 of 22; # E385].  
[http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2005/09/09/000011823\\_20050909180728/Rendered/PDF/E385v2107thPOEReport010.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2005/09/09/000011823_20050909180728/Rendered/PDF/E385v2107thPOEReport010.pdf). Downloaded 19 July 2007.
- Sector and Thematic Evaluation Group, Operations Evaluation Department, World Bank Group. 2002. Project Performance Assessment Report [Report No. 24405]: Papua New Guinea; Petroleum Exploration Technical Assistance Project (CREDIT 1279-PNG) Petroleum Exploration and Development Technical Assistance Project (LOAN 3670-PNG). PLACE OF PUBLICATION: PUBLISHER.
- United Nations. 1993. The Human Rights Dimensions of Population Transfer, Including the Implantation of Settlers [E/CN.4/Sub.2/1993/17]. Sub-Commission on Prevention of Discrimination and Protection of Minorities Forty-fifth session, Geneva (2-27 August 1993).  
<http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/683f547c28ac785880256766004ecdef?Opendocument>. Downloaded 15 May 2007.
- Vienna Declaration and Programme of Action. 1993. Adopted at the World Conference on Human Rights, Vienna (14-25 June 1993). [UN Doc A/CONF.157/23] Part I, para 10.  
[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En). Downloaded 15 May 2007.
- World Bank Group. 2003a. Implementation of Operational Directive 4.2 on Indigenous Peoples: An Evaluation of Results. OED Report No. 25754.
- World Bank Group. 2003b. A Case Study on Indigenous People, Extractive Industries and the World Bank. Papua New Guinea. Presented at the workshop on "Indigenous Peoples, the Extractive Industries and the World Bank," Exeter College in the University of Oxford, UK. 14-15 April 2003.  
[http://www.forestpeoples.org/documents/prv\\_sector/eir/eir\\_inter\\_nat\\_wshop\\_png\\_case\\_apr03\\_eng.pdf](http://www.forestpeoples.org/documents/prv_sector/eir/eir_inter_nat_wshop_png_case_apr03_eng.pdf). Downloaded 15 May 2007.