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Relations with Communities Management System



Manual for
Building
Relationships
with Indigenous
Peoples

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Presentation

The *Manual for Building Relationships with Indigenous Peoples* was created by ERM (Environmental Resources Management) according to the agreement between ARPEL (Latin American and Caribbean Oil and Natural Gas Businesses Association) and ESSA (Environmental Services Association of Alberta- Canada), and was financed by the Canadian government agency CIDA (Canadian International Development Agency).

The aim of this manual is to provide guidance for oil and gas companies operating in South America and the Caribbean region on the subject of building and improving relationships with indigenous peoples by encouraging best practice and the respect of recognised international standards.

This approach is based on the acknowledgement of indigenous peoples' rights and cultural differences as part of the oil and gas sector's commitment towards sustainable development. It includes practices aimed at improving the standard of living of indigenous peoples and respecting and strengthening their identity.

Users of this manual should keep in mind the normative context at the time in which it was written when the process of achieving recognition of the existence of original peoples and their universal and individual rights was still ongoing. Elements such as legislation, knowledge about original peoples and their recognition by societies and states are continuously evolving, meaning that users need to bear in mind that although general key directions are given to support their work, each local context offers its own challenges and particularities, demanding their adaptation from one reality to another.

Emphasis is given to international norms concerning rights and their recognition by relevant organizations. Key elements are provided to develop proactive relationships respecting those rights through the use of proven best practice.

1.0 INTRODUCTION

*"Companies and indigenous peoples look at the same landscape and see different things. A company will see the potential for harnessing resources to provide revenue and profits; indigenous peoples often see the land as integral to who (sic) they are, incorporating their culture, spirituality, history, social organization, family, food security, economy and health"*¹

Oil and gas companies operating in Latin America and the Caribbean (LAC) develop their business in a region of great energy potential, as valuable resources lie in geological structures underground or in sedimentary basins. However, there are other natural/biological and sociocultural factors which make this region unique for this industry.

Among the variety of sociocultural contexts characterizing LAC, special importance must be given to areas historically occupied by peoples with different languages and cultures; most of them come originally from the land where they live today, and their number and multiplicity makes LAC the most culturally diverse region in the world. Some of the oil and gas industry investment is made in territories historically occupied by these peoples who, in spite of being represented by 40 million persons, were "invisible" as social subjects until relatively recently. But nowadays their voices and faces are increasingly present, and national and international regulations recognize their existence as well as their rights, basically the right to own their land collectively and to be consulted about matters that could affect their ways of life.

This reality requires an up-to-date and expert knowledge about the socio-cultural contexts in which companies operate, as well as the different social actors they must interact with in order to develop their projects. High socio-environmental standards are a requirement and a standard for business. These not only encourage "clean industries", but also a sustainable environment, and above all, respect for peoples and individuals living in territories where companies wish to invest and produce, thus significantly contributing to the improvement of living conditions for local communities.

¹ (2007) Indigenous rights, indigenous wrongs: risks for the resource sectors. EIRIS - Ethical Investment Research Services. 20 pages. London; p. 1

1.1 INDIGENOUS PEOPLES AND TERRITORIES IN LATIN AMERICA AND CARIBBEAN (LAC)

It is estimated that towards the end of the 20th century, 27% of the rural population of LAC were indigenous peoples. 70% of this indigenous rural population was concentrated in five countries: Peru, Mexico, Guatemala, Bolivia, and Ecuador, while in the cases of Brazil and Costa Rica they represented less than 1% of the total population²

The greatest diversity of peoples is to be found in Mexico (12 linguistic families, 56 language groups and 290 varieties or dialects³); Colombia (15 language families⁴, 65 ethnolinguistic communities⁵); Peru (15 language families and 56 ethnolinguistic groups only in the Amazons area); while several Central American countries (such as Guatemala, El Salvador, Panama) have a narrower cultural diversity.

It is also important to consider that within national territories the distribution of indigenous settlements is heterogeneous. Some areas have mostly indigenous population, while others have almost none or just a marginal proportion of the total population. Also worth noting is that indigenous populations have different kinds and degrees of relation with the dominant populations, ranging from greater commercial interchange (as is the case with Quechua Peruvians and Aymara Bolivians) to complete isolation (such as nomadic or semi nomadic Amazonian groups with virtually no contact with the rest of the country).

The following map (Fig. 1) shows the major areas with indigenous population in LAC.

² http://www.unicef.org/lac/overview_4172.htm , reviewed on July the 29th 2008

³ http://www.bnmexico.com/html/ore_por_mexico.html , reviewed on July the 30th 2008.

⁴ http://www.bnmexico.com/html/ore_por_mexico.html , reviewed on July the 30th 2008.

⁵ http://www.bnmexico.com/html/ore_por_mexico.html , reviewed on July the 30th 2008.

FIGURE 1 - MAP OF MAIN TERRITORIES WITH INDIGENOUS POPULATION⁶



Regarding territorial rights, ILO Convention 169 (a regulating instrument specifically created by International Labour Organization –ILO- for indigenous peoples in the 1980’s), establishes the right indigenous peoples have to preserve their cultural identity and their territory, as explicitly mentioned in article 13.1: “In applying the provisions of this Part of the Convention, governments shall respect the

⁶ Information about Colombia, Venezuela, Guyana, Guyana Francesa, Suriname, Ecuador, Chile, Argentina, Bolivia, Paraguay, and Brazil was obtained at <http://www.muturzikin.com/countries.htm>, reviewed between 07/30/08 and 08/01/08. Information about Central American countries was taken from *Atlas de culturas de agua de América Latina y el Caribe*. Information about Peru was found at <http://webserver.rcp.net.pe/convenios/coppip/Presentacion1.html> Reviewed on August the 1st.2008

special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship."

Recognition of territorial rights is not uniform throughout the region: while some states recognize the territorial ownership these populations are entitled to, (be it as Native Communities, Peasant Communities in the case of Peru, or as Protected Communities in the case of Colombia) in other states there is no such recognition. Although most states have signed ILO Convention 169 the process of recognition of these rights has not been equally successful in all countries. Hence, the current situation shows different degrees of recognition, different problems and demands from indigenous peoples, and different state policies related to them.

1.2 BIOLOGICAL DIVERSITY

Due to many different climates, topographies and historical configuration processes, LAC contains many different levels of biodiversity. Several organizations have put forward conservation policies for different areas, with varying results on state policies. For instance, Conservation

International has used the hotspot, or critical ecoregions concept suggested by Norman Myers in 1988 and established prioritized areas or hotspots around the world, including LAC, according to endemic species and degree of threat. Among these are: the Caribbean, the Cerrado region of Brazil, the Atlantic Forest, the Chilean Winter Rainfall Valdivian Forest, Central America, the Tumbes-Chocó-Magdalena region and the Sierra Madre Forest. Hotspots are shown in the following map (Fig. 2):

FIGURE 2 - MAP OF BIODIVERSITY HOTSPOTS (CI 2005) (WWF⁷)



The World Wide Life Fund (WWF) has also identified ecoregions (terrestrial, aquatic and marine) with exceptional biodiversity levels. In LAC, 34 earth ecoregions, 10 freshwater ecoregions, and 10 sea ecoregions were identified. (Fig. 3)

⁷ Biodiversity Hotspots - <http://www.biodiversityhotspots.org/Pages/default.aspx> (Reviewed on November the 13th 2008)

FIGURE 3 - ECOREGIONS MAP (WWF⁸)



1.3 BASINS AND ENERGY RELATED ACTIVITIES

According to Carlos de Greiff Moreno⁹, the second biggest energy reserve in the world is found around the Caribbean Sea, comprising the Mexican Gulf, the Caribbean and the West Indies Sea (Cuba, Mexico, Central America, Panama, Colombia and Venezuela). (Fig. 4)

⁸ WWF Global's 2001 - <http://www.worldwildlife.org/science/data/item1872.html> (Reviewed on November the 13th 2008)

⁹ Quoted in "Petróleo Colombiano", at <http://www.nodo50.org/usocolombia/Petroleo%20Colombiano.htm> (Reviewed August the 1st 2008)

FIGURE 4 - HYDROCARBON AND OIL & GAS INDUSTRY ACTIVITIES MAP¹⁰



The first oil searches in LAC were made in Talara, Peru, in 1849. The first oilfield was exploited in 1863 in Mexico. Later, oil pipelines were built for transportation.

In 1913 natural gas reserves were discovered in Argentina, and pipelines were built accordingly. In the middle 70's, Bolivia discovered it had huge gas reserves in the Amazonian South and East areas.

Currently Mexico is the biggest oil producer, while Venezuela is the biggest oil exporter. Venezuela has the biggest gas reserve in South America, followed by Bolivia. However, the biggest gas exporter is currently Argentina. Other countries such as Brazil, Peru, Ecuador and Colombia, also play an important role in hydrocarbon exploitation and exploration in LAC.

¹⁰ Information about Peru comes from companies Peru Petro (2007), and Transportadora de Gas del Perú (TGP).

1.4 RELATIONSHIP BETWEEN INDIGENOUS TERRITORIES, BIOLOGICAL DIVERSITY AREAS AND OIL & GAS INDUSTRIAL ACTIVITIES IN LAC

The first relationship to be mentioned is the geographical coincidence between indigenous territories and biologically highly diverse areas. Even nowadays many indigenous populations living in such areas depend on resources coming from the forest for survival.

Secondly, there are many areas in LAC where hydrocarbon industrial activities coincide with the location of indigenous populations. Such is the case in the Peruvian and Brazilian Amazonian forest, the center of Bolivia and the eastern coast of Venezuela.

Importantly, there are certain places where biological diversity, indigenous settlements and hydrocarbon activities (extraction, transportation through pipes and/or refining plants) occur together. The following map (Fig. 5) shows coincidence areas between two or more of these factors:

FIGURE 5 - INDIGENOUS TERRITORIES, BIOLOGICAL DIVERSITY AREAS AND HYDROCARBON ACTIVITY MAP



Finally, given a situation of geographical coincidence of indigenous populations, hydrocarbon exploitation potential and biological diversity, a scenario with different actors is to be expected, whose interests and rights will be divergent and in some cases juxtaposed. These actors will show cultural differences in their views of the world, nature and other people. Therefore, part of the oil and gas industry is developed in highly sensitive areas, socially as well as environmentally.

"However, in spite of their heterogeneity and their different degrees of interaction with dominating societies, during the last three decades solid indigenous organizations have seen the day. They claim their rights to identity as Indigenous Peoples, revaluing their patrimony not only as a basis for identity and cultural survival, but also as a resource for the social and economic development of their peoples and of society in general²⁷. The reasons behind a specific strategy for Indigenous Peoples, unlike other population groups, are the following:

(i) The specific character of their culture, rights, and development objectives, due to their being in the Latin American and Caribbean regions before conquest or colonisation;

(ii) a high rate of geographical coincidence between indigenous occupation and ecological fragility, related to the need to recognise the role played by ancestral and traditional knowledge when it is consistent with a sustainable management of lands and territories;

(iii) national and international legal frameworks which need to be accompanied by implementation measures and indigenous legal systems which require devices to articulate them within the national legal systems;

(iv) political and cultural diversity of Indigenous Peoples and different degrees of integration into national political and economic life; and

(v) indigenous demands for a greater autonomy in decisions concerning their own affairs and for a higher participation in government, in the definition of their own social and economic growth models, and in the public policies of their countries. These elements constitute new challenges and opportunities, especially in the current context of decentralisation and democratization, and need answers to protect the security of citizens and foster equal development, as well as a participative and inclusive democracy."

Declaration at the Meeting of Culture Government Secretaries, Bogotá, 2002

In Deruyttere, Anne (Coord.) (2006) *Política Operativa de Pueblos Indígenas y Estrategia para el Desarrollo Indígena. Serie de estrategias y políticas sectoriales del Departamento de Desarrollo Sostenible*. Banco Interamericano de Desarrollo, Washington D.C. p. 19-20.

ANNEXES

Note to annexed section: data included in annexes 1, 2 and 3 are those used in or corresponding to maps presented in this section as indicated in bibliography

ANNEX I - Main Groups of Indigenous Peoples from LAC

This list served as a basis to illustrate the territorial presence of indigenous peoples shown in Map 1. Priority was given to information containing territorial and geographical references. Therefore this is not to be taken as an exhaustive list of existing groups nor of their legal status as of today. For this reason, some references dwell on language, ethnicity or ethnolinguistic family. Please keep in mind that data gathering and the recognition of these peoples is a slow process depending on the availability of information and on whether or not they have formed their own agencies and organizations in order to be recognised.

Argentina		
Spource: http://www.muturzikin.com/countries.htm		
Araucano	Quechua	Tupi
Chon	Nambiquara	
Mataco-Guaicuru	Tucano	
Bolivia		
Source: http://www.boliviacontact.com/es/informacion/etnias.php http://www.iwgia.org/		
Quechua AII	Tacana	Pano
Jaqi	Mosetén	Chapacura
Tupi Guaraní	Mataco Maka	Lenguas Aisladas
Chiquito	Uru	
Arawak	Zamuco	
Costa Rica		
Source: Atlas de culturas de agua de América Latina y el Caribe		
Chibchan		
Creole		
Colombia		
Source: http://www.etniasdecolombia.org/indigenas/		
Arawak	Tupi – Guarani	Quechua
Guahibo	Tucano occidental	Makú-Puinave
Andoque	Chibcha	Bora
Tucano oriental	Chocó	Sábila-Piaroa
Caribe	Huitoto	Yagua
Chile		
Source: http://www.muturzikin.com/countries.htm		
Aymara		
Araucano		
Mataco-Guaicuru		
Tucano		

Ecuador		
Source: http://www.muturzikin.com/countries.htm (Ethnolinguistic Family)		
Quechua -Kichwa	Zaparo- Zaparoana	
Jivaro- Jibaroana		
Araua	Tucano occidental	
Chibcha	Waorami	
Cahuapa		
El Salvador		
Source: Atlas de culturas de agua de América Latina y el Caribe		
Uto-Aztecan		
Creole		
Guatemala		
Source: Atlas de culturas de agua de América Latina y el Caribe		
Arawak		
Mayan		
Guyana		
Source: Gregor, Cletus; Pueblos indígenas y derechos constitucionales en América Latina: un panorama; Instituto Indigenista Interamericano, México 2000		
Arawak		
Caribe		
“independiente”		
Honduras		
Source: Atlas de culturas de agua de América Latina y el Caribe		
Uto-Aztecan	Arawakan	
Mayan	Unclassified	
Chibchan		
Creole		
Misumalpan		
México		
Source: www.bnmexico.com/html/ore_por_mexico.html		
Chinanteco	Mixteco	Uto-azteca
Baja California	Otomí Pame	Zapoteco
Huave	Popoloca	
Maya	Purépecha	
Mixe-zoque	Totonaco	
Nicaragua		
Source: Atlas de culturas de agua de América Latina y el Caribe		
Chibchan		
Creole		
Misumalpan		
Panamá		
Source: Atlas de culturas de agua de América Latina y el Caribe		

Chibchan		
Creole		
Choco		
Paraguay		
Source: http://www.aip.org.py/EtniasParaguayas.html		
Guaraní		
Mataco		
Zamuco		
Lengua-Makoy		
Guaicurú		
Perú		
Source: http://es.wikipedia.org/wiki/Idiomas_del_Per%C3%BA		
Aru	Cahuapana	Tucano
Arawa (arawa)	Pano	Tupí
Arawak	Peba-yagua *	Bora-witoto (Witotoanas)
Harakmbut *	Quechua	Záparo
Jibaro	Tacana (takana)	
Surinam		
Source: Gregor, Cletus; Pueblos indígenas y derechos constitucionales en América Latina: un panorama; Instituto Indigenista Interamericano, México 2000		
Akoerio/Akuriyó	Otros	
Arowakken		
Karaíben		
Trio		
Wajana		
Venezuela		
Source: http://www.muturzikin.com/countries.htm		
Caribe	Arutani-Sape	
Lenguas aisladas	Chibcha	
Arawak		
Saliva		
Guahiba		

ANNEX II - Ecoregions identified by WWF (2000)¹¹

Terrestrial Ecoregions		
Caribbean Amazonian Southern Orinoco Mangroves	Chocó-Darrien Moist Forest	Northern Andean Páramo
Amazonian Swamp Forests	Venezuela Montane Coastal Forest	Savannas Flooded Wetland
Atacama and Sechura Deserts	Galápagos Islands Shrubland	Patagonic Steppe
Atlantic Dry Forests	West Indies Moist Forests	Negro-Juruá Moist Forest
Atlantic Forests	West Indies Pine Forests	Western and Eastern Sierra Madre Pine Forest
Central Andean Dry Puna	Guyana High Moist Forests	Sonoran-Baja Deserts
Central Andean Yunga	Guyana Moist Forests	South American Pacific Mangroves
Cerrado Forests and Savannas	Savanna Plains	Southern Mexico Dry Deserts
Chihuahuan-Tehuacán Desert	Mesoamerica Pine Forests	South Eastern Amazonian Moist Forest
Chilean Shrubland	Napo Moist Forest	Talamancan-Isthmian Pacific Forests
Chiquitano Dry Forest	Northern Andean Montane Forest	
Valdivian Rainy Temperate Forest	Tumbesino Andean Dry Forests	

Aquatic Ecoregions		
Amazonian Flooded Forests	Guyana's Agua fresca	Amazonian High Basin and Tributary rivers
Brazilian Shield Amazonian Rivers & Streams	High Mexican Lagunas	Cuenca alta del Paraná y sus tributarios
Chihuahuan Aquatic Ecoregion	High Mexican Lagunas	
West Indies Aquatic ecoregion	Orinoco Flooded Forests	

Marine Ecoregions		
Galápagos Marine Ecoregions	Mesoamerican Reef	Rapa Nui
West Indies Marine Ecoregions Ecorregión marina de Grandes Antillas	Northeast Brazil Shelf Marine Ecoregion	Southern Caribbean Marine Ecoregion
Panama Marine Ecoregion	Panamá Bight	
Humboldt Stream Marine Ecoregion	South Eastern Patagonian Marine Ecoregion	

ANNEX III - Biodiversity Hotspots (Conservation International, 2005)¹²

Biodiversity Hotspots	
Atlantic Forest	Madrean Pine – Oak Woodlands
Caribbean Islands	Mesoamerica
Cerrado	Tropical Andes
Chilean Winter Rainfall and Valdivian Forest	Tumbes – Choco - Magdalena

¹¹ WWF <http://www.worldwildlife.org/science/ecoregions/item1847.html> (Reviewed on August the 1st 2008)

¹² Conservation International - <http://www.biodiversityhotspots.org/Pages/default.aspx> (Reviewed on August the 1st 2008)

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2.0 LEGAL FRAMEWORK AND REGULATIONS

"Sometimes human rights are perceived as taboo -something typical of activists-blocking people's minds. However, it is necessary to show our colleagues the whole range of human rights, sometimes using another terminology, so that they can understand how relevant they are for business".¹³

2.1 GENERAL INTERNATIONAL REGULATION

Members of indigenous peoples, because of their quality as human beings, enjoy all human rights that have been recognised in different treaties and conventions on the subject. The treaties and conventions presented here do not specify any particular protection for indigenous peoples, but no analysis of this topic can go any further without the knowledge of these general regulations.

Although indigenous peoples do have specific individual and collective rights, many of their rights are a natural consequence of the fact that they are human beings. In this connection, article 1 of the United Nations Declaration on Indigenous Peoples' Rights acknowledges that *"indigenous peoples have the right, as peoples as well as individuals, to fully enjoy those fundamental human rights recognised in the United Nations Charter, the Universal Declaration of Human Rights and the international human rights regulations."*

The main treaties and conventions on human rights, of course applying to these peoples are:

2.1.1 [Universal Declaration of Human Rights, 1948](#)

This declaration was adopted by United Nation's General Assembly on December the 10th 1948, which states the fundamental rights for every human being. Although it is not obligatory for member states, it has served as a basis for two international conventions of the United Nations ("UN", from now on), the International Covenant on Civil and Political Rights and the International Covenant on

Economic, Social, and Cultural Rights.

¹³ (2006) Taller de Derechos Humanos en la Industria de Petróleo y Gas. July the 21st 2006, Coral Beach Hotel, Cancún. Report, p.4.
http://www.unglobalcompact.org/docs/issues_doc/human_rights/Meetings_x_events/21Jul06_Draft_Report_21August_Espaxol.doc

2.1.2 [Declaration of the UN on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992](#)

Approved by the General Assembly on December the 18th 1992, in order to proclaim the development of human rights and inspire respect for the fundamental freedoms of all people, without any distinctions based on race, sex, language or religion.

2.1.3 [Convention of the Elimination of All Forms of Racial Discrimination, 1965](#)

Adopted on December the 21st 1965, and entered into force on January the 4th 1969. It has been ratified by 85 countries and its purpose is to adopt any necessary means to eliminate racial discrimination in all its forms and manifestations and to prevent and fight racist doctrines and practices in order to promote understanding between races and create an international community free of any form of racial segregation.

2.1.4 [International Covenant on Economic, Social and Cultural Rights, 1966](#)

It recognizes economic, social, and cultural rights as a condition for the development of any human being. It was adopted on December the 16th, 1966 and entered into force from January the 3rd 1976. It has been ratified by 146 states.

2.1.5 [International Covenant Civil and Political Rights, 1966](#)

Like the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights recognizes civil and political rights as essential for the development of the human being. It was adopted on December the 16th, 1966 and entered into force on March 23rd 1976. It has been ratified by 149 states.

2.1.6 [American Convention on Human Rights, 1969](#)

It was adopted on November the 22nd, 1966 and entered into force on July the 18th 1978. It constitutes the basis of the inter-American system to protect human rights. It has been ratified by 24 member states of the Organization of American States ("OAS", from now on).

2.2 SPECIFIC INTERNATIONAL REGULATIONS

2.2.1 [ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries, 1989](#)

The ILO Convention 169 concerns indigenous and tribal peoples in independent countries. It was adopted on June the 27th 1989 by the General Conference of the ILO at its 76th session. It entered into force on September the 5th 1991. It has been ratified by most Latin American countries, and some European countries such as Spain and Denmark have adopted this convention as a guideline for their international cooperation policy.

The following list shows which countries have ratified the convention:

TABLE 1 - COUNTRIES HAVING RATIFIED ILO CONVENTION 169

Country	Ratification Date
Argentina	07.03.00
Bolivia	12.11.91
Brasil	07.25.02
Colombia	08.07.91
Costa Rica	04.02.93
Chile	15.09.08
Dinamarca	02.22.96
Dominica	06.25.02
Ecuador	05.15.98
España	02.15.07
Fiji	03.03.98
Guatemala	06.05.96
Honduras	03.28.95
México	09.05.90
Nepal	09.14.07

Country	Ratification Date
Noruega	06.19.90
Países Bajos	02.02.98
Paraguay	08.10.93
Perú	02.02.94
República Bolivariana de Venezuela	05.22.02

Convention 169 constitutes the main international document for the protection of specific indigenous rights. It proposes basic concepts about respect, recognition and participation for these peoples, admitting the fact that in many places all over the world indigenous and tribal groups were not allowed to enjoy fundamental rights to the same extent as the rest of the population of the states where they live.

This Convention guarantees the right indigenous and tribal peoples have to decide on their own priorities concerning their social, cultural and economic development, insofar as their lives, beliefs, institutions, or spiritual welfare could be affected in the territories they inhabit or otherwise use. With this goal, the Convention recognizes the special tie between these peoples and the territories they occupy or otherwise use, and the collective aspects of this tie.

Although this Convention includes several rights favouring indigenous and tribal peoples, it also establishes a series of duties to be fulfilled by those states which ratify it, namely the obligation to develop, with the participation of the corresponding groups, coordinated and systematic actions aimed at protecting their rights and guaranteeing their integrity.

The main aspects included in this Convention are:

- It applies to peoples with the following characteristics:
 - Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; and,
 - Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

In spite of the aforementioned criteria, self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

- Any measures taken by States when applying this Convention should have the following goals:
 - Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population.
 - Promoting the full realization of the social, economic and cultural rights of these peoples, showing respect for their social and cultural identity, their customs and traditions and their institutions; and,

- Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.
- States have the following obligations:
 - Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
 - Establish means by which these peoples can freely participate, at least to the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
 - Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the necessary resources for this purpose.
- The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.
- In applying national laws and regulations to the peoples concerned, due respect shall be had for their customs or customary laws.
- In respect to their lands or territories, the Convention states that:
 - In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship;
 - The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect;
 - The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources;
 - In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands;

- The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities;
- The Convention establishes that Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:
 - Admission to employment;
 - Equal remuneration for work of equal value;
 - Medical and social assistance, occupational health and safety;
 - The right of association (union activities).

Finally, it is worth mentioning that Convention 169 has been developed in greater detail and specified by the Recommendation on protection and integration of indigenous populations and other tribal and semitribal populations in independent countries (ILO Recommendation 104), the Guideline for the Application of ILO Convention 169, created by ILO itself¹⁴, as well as the Manual for Convention 169 on Indigenous and Tribal Peoples¹⁵.

2.2.2 [Declaration on the Rights of Indigenous Peoples, 2007](#)

On September the 13th, 2007, the UN's General Assembly approved the Declaration on the Rights of Indigenous Peoples. The text was approved with 143 votes in its favor, 4 against (Canada, USA, New Zealand and Australia), and 11 abstentions. It emphasizes the right these peoples have to keep and strengthen their own institutions, cultures and traditions, and pursue their own development, according to

their needs and aspirations.

The rights recognised in this Declaration constitute minimal rules for the survival, dignity, human rights, and well-being of indigenous peoples all over the world. It establishes their right to decide freely, to be autonomous and have their own government for their internal affairs, as well as to determine their priorities and strategies for exercising their right to development; moreover, it recognises their right to own lands, territories and resources they have traditionally possessed, acquired, occupied or otherwise used.

The Declaration deals with individual and collective rights corresponding to indigenous peoples, emphasizing rights regarding culture, identity, education, health, employment, language, beliefs, religion, among other topics. Besides, it encourages a well-balanced and cooperative relationship between States and indigenous peoples and promotes an effective participation of these in all affairs concerning them and/or affecting their rights. With this purpose, States shall consult them before

¹⁴ Source: <http://www.oit.or.cr/mdtsanjo/indig/conten.htm>, reviewed on July the 8th 2008.

¹⁵ INTERNATIONAL LABOUR ORGANIZATION. *Convention 169 on Indigenous and Tribal Peoples: A Manual*. Geneva: International Labour Office, 2003.

adopting and applying measures which could affect them, in order to obtain their free consent based on information.

Along these lines, it recognises the right indigenous peoples have to decide freely, to be autonomous and have their own government for their internal affairs, as well as to determine their priorities and strategies for exercising their right to development. Moreover, it recognises their right to own lands, territories and resources they have traditionally possessed, acquired, occupied or otherwise used. In this sense, it establishes that States shall consult indigenous peoples and cooperate in good faith with them, in order to obtain their free consent, based on information, before adopting and applying any measure which could affect them, particularly when the exploitation of water, minerals or other resources is involved. It also establishes that States shall create effective mechanisms for a fair and equal reparation related to these activities. Adequate measures shall be adopted to reduce their damaging consequences, whether they are environmental, social, economic or spiritual.

This Declaration also considers the right to preserve and protect the environment and the productivity of indigenous lands and resources. With this goal, States are advised to take effective measures to avoid mineral waste or dangerous matter accumulation in indigenous land or territories without their free, previous and informed consent.

In relation to work, the Declaration states that indigenous individuals and peoples must fully enjoy all labour rights that are nationally and internationally applicable. In this connection, indigenous people have the right not to be labour discriminated regarding type of work or salary among other issues.

Finally, it recognises that indigenous people have the right to keep, control, protect, and develop their cultural patrimony, their traditional knowledge, their cultural expressions, their scientific and technological manifestations, including human and genetic resources, seeds, medicines, knowledge on flora and fauna, oral traditions, literature, pictorial designs, traditional sports and games, and visual and performing arts. It is therefore established that they have a right to maintain, control, protect and develop their intellectual property over such cultural patrimony, traditional knowledge and cultural expressions.

2.2.3 Convention on Biological Diversity, 1992

It was signed in 1992 and has so far been approved by 168 countries. Its main objectives are the conservation of biodiversity, sustainable use of its components, and fair and equal repartition of benefits derived from genetic resources, through an appropriate access to these resources and an appropriate application of relevant technologies.

The Convention establishes global and national commitments regarding the identification and monitoring of biodiversity; conservation in situ (protected areas, introduction of foreign species, protection of the knowledge of local populations) and ex situ (biological collections and genetic banks); sustainable use of biodiversity elements, control and minimization of negative impacts, access to genetic resources and technology; information exchange and cooperation between developed and developing countries for a sustainable use of biodiversity, among other issues.

The reach of this Convention is important for indigenous peoples, since it recognises that many local communities and indigenous populations depend on these resources to live according to their traditional ways of life, based on traditional knowledge about such resources. That is why this Convention advises

to equally share those benefits obtained using this knowledge, in order to preserve biological diversity and use resources in a sustainable way.

2.2.4 Constituting Convention of the Fund for Development of Indigenous Peoples in Latin America and the Caribbean, 1992

Approved on July the 24th 1992, during the II Iberian-American State and Government Leaders Summit. Its aim is to create a mechanism to support self-development for indigenous peoples, communities and organizations in Latin America and the Caribbean. Thus, it refers to the creation of a Fund whose purpose is to support programmes and projects by indigenous peoples living in member countries of the Indigenous Fund, or in countries who have agreed to take part in its activities.

According to this Convention, indigenous peoples are those descending from populations living in the country, or a geographical region belonging to that country, previous to the conquest, colonization, or establishment of current national boundaries; and irrespective of their legal status, conserve and keep their own social, economic, cultural, and political institutions, or part of them. Furthermore, their having consciousness of their indigenous identity will be a fundamental criterion to determine whether this Convention's regulations apply to them.

In order to reach these goals, The Convention entrusts the following functions to the Fund:

- Provide an entity for dialogue in order to reach an agreement for the formulation of development policies, technical assistance operations, programs and projects of interest for indigenous peoples, with the participation of States, resource providing organizations and the indigenous peoples themselves.
- Channelling financial and technical resources for prioritized projects, in agreement with indigenous peoples, ensuring such projects contribute to their self-development.
- Provide training and technical assistance to strengthen institutions, administration capabilities, human resources and information generation, and research on indigenous peoples and their organizations.

Until today, 23 countries have signed the Convention, but only 22 have ratified it¹⁶.

¹⁶ Countries that have ratified the Convention are: Argentina, Belice, Belgium, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Spain, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Panama, Peru, Portugal, Uruguay, Venezuela. The Dominican Republic has signed the Convention but has not ratified until today (November 2008).

TABLE 2 - INTEREST TOPICS AND RELEVANT INTERNATIONAL AND NATIONAL REGULATIONS

Topic	International Regulation	Some National Regulations on the Topic
Previous Consent	ILO Convention 169 (1989) UN Declaration on Indigenous Peoples' Rights (2007)	<ul style="list-style-type: none"> ▪ Argentina: Federal Law ▪ Mexico: Agriculture Act (1992) ▪ Venezuela: Organic Indigenous Peoples Act (2005)
Previous Consultation	ILO Convention 169 (1989) UN Declaration on Indigenous Peoples' Rights (2007)	<ul style="list-style-type: none"> ▪ Bolivia: Hydrocarbon Bill (2005) ▪ Brazil: Political Constitution (1988) ▪ Colombia: Bill created by Environment Department (1999) ▪ Ecuador: Substitute Regulation for Environment Regulation on hydrocarbon operations. Executive Decree (published Official Record No 265 february the 13th 2001). ▪ Honduras: Property Bill (2004) ▪ Nicaragua: Indigenous Peoples and Ethnical Communities Communal Property Bill for Autonomous Regions on the Nicaraguan Atlantic Coast and on Bocay, Coco, Indio, and Maíz rivers (2003) ▪ Peru: Ley General del Ambiente (2005) ▪ Venezuela: Organic Bill for Indigenous Peoples and Communities (2005)
Participative Monitoring	ILO Convention 169 (1989) UN Declaration on Indigenous Peoples' Rights (2007)	<ul style="list-style-type: none"> ▪ Bolivia: Regulation of Monitoring of Social and Environmental Monitoring of Hydrocarbon Activity in Indigenous Territories (2007) ▪ Ecuador: Substitute Environmental Regulation for Hydrocarbon Activities. Executive Decree 1215 (published in Official Record n. 265, 13 february 2001). ▪ Peru: Regulation for citizenship participation in hydrocarbon activities (2008)
Participation in the process of approval of Environmental Impact Studies	ILO Convention 169 (1989) UN Declaration on Indigenous Peoples' Rights (2007)	<ul style="list-style-type: none"> ▪ El Salvador: General Environment Bill (1998) ▪ Venezuela: Indigenous Communities and Peoples Organic Bill (2005) ▪ Ecuador: Environment Management Bill. Codification 19 Ch. III, September the 10th 2004. Regulation for the Application of Social Participation Mechanisms. Agreement 103. Environment Department, july 2008 ▪ Chile: Decreee 95/01 (2002) ▪ Colombia: Decree 1320 (1997) ▪ Regulation for Citizenship participation in Hydrocarbon Activities. DS No 012-2008-EM
Traditional Knowledge	ILO Convention 169 (1989) Un Declaration on Indigenous Peoples' Rights (2007) Decision 391 of the Andean Community of Nations for a Common Regime of Access to Genetic Resources (1996) Decision 486 of the Andean Community of Nations for a Common Regime of Industrial Property (2000)	<ul style="list-style-type: none"> ▪ Brazil: Legislative Decree 2 (1994) ▪ Chile: Supreme Decree 1963 (1994) ▪ Ecuador: Constitutional Chart (Approved by Referendum end 2008) ▪ Colombia :Bill 165 (1994) ▪ Costa Rica: Bill 7788 (1998) ▪ Venezuela: Bolivian Republic of Venezuela Constitution ▪ Peru: Act 27811 (2002) ▪ El Salvador: Law-Ranking Decree 833 (1994) ▪ Guatemala: Law-Ranking Decree 5-95 (1995) ▪ Honduras: Decree 30-95 (1995) ▪ Uruguay: Act 16408 (1993)
Territory	ILO Convention 169 (1989) UN Declaration on Indigenous	<ul style="list-style-type: none"> ▪ Argentina: Bill 24091 (1992) ▪ Bolivia: Bill 1257 (1991) ▪ Colombia: Political Constitution

Topic	International Regulation	Some National Regulations on the Topic
	Peoples' Rights (2007)	<ul style="list-style-type: none"> ▪ Peru: Legislative Resolution 26253 (1993) ▪ Ecuador: Constitutional Chart (Approved by Referendum end 2008) and Legislative Resolution (not numbered, 1998) ▪ Costa Rica: Bill 7316 (1992) ▪ Brazil: Legislative Decree 143 (2002) ▪ Venezuela: Political Constitution ▪ Honduras: Decree 26 (1994) ▪ Paraguay: Bill 234 (1993) ▪ Guatemala: Legislative Decree 9-96 (1996)

2.3 NON-BINDING
VOLUNTARY
REGULATIONS

2.3.1 Equator Principles

The Equator Principles are a series of guidelines voluntarily assumed by financial organizations for the management of social and environmental matters related to development projects, in order to ensure that social and environmental matters receive due attention when banks negotiate the financing of their projects.

Up to now, these principles have been adopted by different financial organizations of international scope¹⁷.

The Equator Principles are based on rulings made by the International Finance Corporation. For their application, banks have established or will establish a series of internal policies and processes along the same lines as the principles. Banks apply the Equator Principles to any loan for a project whose cost is higher than US\$ 10 million. Previously this threshold was US\$ 50 million, but it was reduced with a view to widen the application of these Principles without including lesser businesses.

In order to obtain this loan, prospective borrowers must prove to the Bank that the project respects the law of the receiving country, as well as pollution reduction and prevention regulations established by the World Bank and the International Finance Corporation for the industrial sector concerned. For projects in emerging markets, prospective borrowers must also show that environmental assessments have taken into account the International Finance Corporation Safeguarding Policies, which provide a guideline for topics such as natural habitats, indigenous peoples, voluntary resettlement, dam safety, forest exploitation, and cultural property.

¹⁷ As to February 2009, institutions having adopted the Equator Principles are: ABN AMRO Bank N.V., ANZ, Arab African International Bank, [Banco Bradesco](#), [Banco de la República Oriental del Uruguay](#), [Banco do Brazil](#), [Banco Galicia](#), [Banco Itaú](#), Bancolombia S.A., [BankMuscat](#), [Bank of America](#), [Bank of Tokyo-Mitsubishi UFJ](#), [Barclays plc](#), [BBVA](#), [BES Group](#), [BMO Financial Group](#), [BNP Paribas](#), [Caja Navarra](#), Calyon, [CIBC](#), [CIFI](#), [Citigroup Inc.](#), [CORPBANCA](#), [Credit Suisse Group](#), [Dexia Group](#), [DnB Nor](#), [Dresdner Bank](#), E+Co, [EKE](#), [Export Development Canada](#), [Financial Bank](#), [FMO](#), [Fortis](#), [HBOS](#), [HSBC Group](#), [HypoVereinsbank](#), [Industrial Bank Co., Ltd](#), [ING Group](#), [Intesa Sanpaolo](#), [JPMorgan Chase](#), [KBC](#), [KfW](#), [IPEX-Bank](#), [la Caixa](#), [Lloyds TSB](#), [Manulife](#), [MCC](#), [Mizuho Corporate Bank](#), Millennium bcp, [National Australia Bank](#), [Nordea](#), [Nedbank Group](#), [Rabobank Group](#), [Royal Bank of Canada](#), [Scotiabank](#), [SEB](#), [Societe Generale](#), [Standard Bank Group](#), [Standard Chartered Bank](#), [SMBC](#), [TD Bank Financial Group](#), [The Royal Bank of Scotland](#), [Unibanco](#), [Wachovia](#), [Wells Fargo](#), [WestLB AG](#), [Westpac Banking Corporation](#). For more information, see <http://www.equator-principles.com/index.shtml>

2.3.2 World Bank
Operating Policy
4.10 on Indigenous
Peoples (July 2005)

The goal of this policy is to contribute to the World Bank's objectives, namely reducing poverty and creating sustainable development ensuring such processes are carried out respecting the dignity, human rights, economies and cultures of indigenous peoples.

Therefore, any prospective borrower applying for World Bank Financing in order to develop a project which could affect an indigenous people must first carry out a consultation process, on a free and informed basis. This means that the World Bank will only finance a project when previous, free and information-based consultations show wide support from the indigenous population concerned.

For this purpose, measures are included to avoid any negative effects on indigenous communities; and in case these are unavoidable, to reduce them as much as possible, mitigate them or compensate for them. Moreover, World Bank financed projects must necessarily provide these populations with social and economic benefits which are appropriate from an intergenerational and gender point of view.

The World Bank recognises that the identities and cultures of indigenous peoples are inseparably tied to the lands they inhabit and the natural resources they depend on. These particular circumstances make indigenous peoples especially exposed to risks or consequences of varying importance, such as loss of identity, culture or traditional lifestyles, as well as different diseases.

Unlike other international regulations, this operating policy does not define "indigenous peoples"; the term is used in a generic sense to refer to any vulnerable group with a definite social and cultural identity, usually presenting the following characteristics:

- Their own identification as members of a certain group of indigenous culture and the recognition of this identity by others;
- A collective attachment to geographically defined habitats, to traditional territories or to natural resources obtained in these territories, which can coincide with the project area;
- Customary, cultural, economic, social, or political institutions which are different from those prevailing in the dominating society; and,
- An indigenous language is usually different from the official language.

For a project to be financed by the World Bank, the following requirements must be met in case indigenous peoples might be affected:

- A preliminary study by the Bank to determine the presence of Indigenous Peoples in the area or their collective attachment to the land;
- A social evaluation by the borrower;
- A previous consultation process, free and on an informed basis, so that indigenous peoples affected during any stage of the project and particularly during its preparation, can clearly express their opinions as a basis for the decision on whether wide indigenous groups support the project;
- Creation of a Plan for Indigenous Peoples or a Planning Framework for Indigenous Peoples; and
- Information and spreading of the Indigenous Peoples Plan or Planning Framework.

The degree of specificity necessary to satisfy these requirements will depend on the project's complexity and will be proportional to the nature and dimension of possible effects on indigenous peoples, whether positive or negative. During the first preparation stages, the Bank makes a study to determine the presence of Indigenous Peoples in the area or their collective attachment to the land. If after this study the Bank concludes that there exist indigenous peoples in the area or that these are collectively attached to the area, the head of the project will carry out a social investigation to determine the project's positive or negative effects on Indigenous Peoples, and to examine alternatives to the project when negative effects can be important. On the basis of the social evaluation and in consultation with the concerned indigenous communities, the head of the project will create a Plan for Indigenous Peoples, where measures will be established to ensure that groups affected by the project receive social and economic benefits appropriate from a cultural point of view, and in case negative effects are identified, to avoid, reduce as much as possible, mitigate or compensate for any damage thus produced.

2.3.3 IFC Performance
Standard 7:
Indigenous People,
International Finance
Corporation – World
Bank, 2006

The International Finance Corporation wants the projects that it finances to meet high social and environmental sustainability standards; therefore its Social and Environmental Sustainability Policy includes a series of Performance Standards, so that its clients, compulsorily, and their companies, voluntarily, manage the risks and social and environmental impacts of their projects. These Performance Standards refer to evaluation and management of issues such as social and environmental impact, labour and working conditions, pollution prevention and reduction, health, safety, land acquisition, involuntary resettlement, biodiversity conservation, natural resources sustainability, indigenous peoples and cultural patrimony; all of these being closely related.

In the case of indigenous peoples, the standard dealing with these aspects is Performance Standard 7, which recognises indigenous peoples as social groups with an identity different from that of the dominating national society. It also recognises that these peoples are usually among the most marginal and vulnerable sectors of the population. In addition, the economic, social, and legal condition of these peoples often limits their ability to defend their culture, interests, and rights over lands or natural resources, and can restrict their participation in development and its benefits. They are particularly vulnerable if their lands and resources are modified, occupied by strangers or deteriorated. Moreover, such occupation can expose them to different risks of varying importance, such as loss of identity, culture, or survival means based on natural resources, or the risk of impoverishment and new diseases.

In this connection, this Standard considers that private sector projects are a chance for indigenous peoples to participate and obtain benefits which could help them fulfil their social and economic aspirations.

This Performance Standard uses the term "Indigenous Peoples" in a general way to refer to a group that is socially and culturally distinct and has the following characteristics, at varying degrees.

- Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others.
- Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories.

- Customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture.
- An indigenous language, is often different from the official language of the country or region.

Requirements

- The client ought to identify through a process of Social and Environmental Assessment all communities of Indigenous Peoples who may be affected by the project within the project's area of influence, as well as the nature and degree of the expected social, cultural (including cultural heritage), and environmental impacts on them, and avoid adverse impacts whenever feasible.
- When avoidance is not feasible, the client should minimize, mitigate or compensate for these impacts in a culturally appropriate manner. The client's proposed action must be developed with the informed participation of affected Indigenous Peoples and contained in a time-bound plan, such as an Indigenous Peoples Development Plan, or a broader community development plan with separate components for Indigenous Peoples.
- The client should establish an ongoing relationship with the affected communities of Indigenous Peoples from as early as possible in the project planning and throughout the life of the project. In projects with adverse impacts on affected communities of Indigenous Peoples, the consultation process will ensure their free, prior, and informed consultation and facilitate their informed participation on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. The process of community engagement must be culturally appropriate and commensurate with the risks and potential impacts to the Indigenous Peoples. In particular, the process will include the following steps:
 - Involve Indigenous Peoples' representative bodies (for example, councils of elders or village councils, among others);
 - Be inclusive of both women and men and of various age groups in a culturally appropriate manner;
 - Provide sufficient time for Indigenous Peoples' collective decision-making processes;
 - Facilitate the Indigenous Peoples' expression of their views, concerns, and proposals in the language of their choice, without external manipulation, interference, or coercion, and without intimidation; and,
 - Ensure that the grievance mechanism established for the project, as described in Performance Standard 1, paragraph 23, is culturally appropriate and accessible for Indigenous Peoples.
- The client must seek to identify, through the process of free, prior, and informed consultation with, and the informed participation of the affected communities of Indigenous Peoples, opportunities for culturally appropriate development benefits. Such opportunities should be commensurate with the degree of project impacts, with the aim of improving their standard of living and livelihoods in a culturally appropriate manner, and to fostering the long-term sustainability of the natural resource on which they depend.

- Indigenous Peoples are often closely tied to their traditional or customary lands and natural resources on these lands. While these lands may not be under legal ownership pursuant to national law, use of these lands, including seasonal or cyclical use, by communities of Indigenous Peoples for their livelihoods, or cultural, ceremonial, or spiritual purposes that define their identity and community, can often be substantiated and documented. If the client proposes to locate the project on traditional or customary lands under use, the client should follow these steps:
 - Document its efforts to avoid or at least minimize the size of land proposed for the project;
 - The Indigenous Peoples' land use will be documented by experts in collaboration with the affected communities of Indigenous Peoples without prejudicing any Indigenous Peoples' land claim;
 - Inform the affected communities of Indigenous People of their rights with respect to these lands under national laws, including any national law recognizing customary rights or use;
 - Enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and the successful outcome of the negotiation.
- The client should consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held traditional or customary lands under use. If such relocation is unavoidable, the client will not proceed with the project unless it enters into a good faith negotiation with the affected communities of Indigenous Peoples, and documents their informed participation and the successful outcome of the negotiation.

2.3.4 Operational Policy on Indigenous People (OP765) and Strategy for Indigenous Development, used by the Inter-American Development Bank, 2006

This policy has two fundamental purposes: (i) support development-with-identity projects by indigenous peoples, including the strengthening of their managing capabilities; (ii) safeguard indigenous peoples and their rights against adverse impacts and exclusion in Bank-funded development projects.

This policy applies to the Inter-American Development Bank (from now on "IADB"), the Multilateral Investment Fund (MIF), and all activities and operations using this Bank's resources, including financial and non-financial products.

According to this policy, the term "indigenous peoples" refers to groups meeting the following criteria: (i) they are descendants from populations inhabiting Latin America and the Caribbean at the time of the conquest or colonization;

(ii) irrespective of their legal status or current residence, they retain some or all of their own social, economic, political, linguistic and cultural institutions and practices; and (iii) they recognize themselves as belonging to indigenous or pre-colonial cultures or peoples.

The policy contains two sets of directives. The first requires the Bank to use its best efforts to promote the development with identity of indigenous peoples. The second creates safeguards designed to prevent

or minimize exclusion and adverse impacts that Bank operations might generate with respect to indigenous peoples and their rights.

Support to Development with Identity

According to this policy, the Bank will do its best to support the region's national governments and indigenous peoples, as well as relevant private sector and civil society actors, in mainstreaming indigenous issues in local and national development agendas and in the Bank's project pipeline. In this connection, the Bank will seek to support the initiatives of governments and indigenous peoples designed to promote indigenous social, economic, political, and organizational development through socio-culturally appropriate activities and operations and innovative mechanisms.

For that reason, The Bank will conduct participatory diagnostic studies and promote the inclusion of the corresponding conclusions and recommendations into the design of projects, programs, and technical cooperation operations.

Safeguards in Bank Operation¹⁸

According to this policy's provisions, the bank will apply certain eligibility criteria before financing a project, according to the legal requirements relevant for the project, the safeguards established in this policy; it must also be consistent with other IADB policies.

- **Adverse Impacts:** The Bank-funded development projects will conduct its operations in a way that prevents or mitigates direct or indirect adverse impacts on indigenous peoples or their individual or collective rights or assets. For this purpose, the Bank will adopt the technical criteria and procedures and implement the mechanisms necessary to identify, assess and prevent or mitigate said impacts. To this end, the Bank will apply the following specific safeguards
 - The Bank will require and verify that the project proponent conduct an evaluation to determine the seriousness of potential adverse impacts on physical and food security, lands, territories, resources, society, rights, the traditional economy, way of life and identity or cultural integrity of indigenous peoples, and to identify the indigenous peoples affected and their legitimate representatives and internal decision-making procedures. This evaluation will include preliminary consultations with potentially affected indigenous peoples;
 - When potential adverse impacts are identified, the Bank will require and verify that the project proponent incorporate the design and implementation of the measures necessary to minimize or prevent such adverse impacts, including consultation and good faith negotiation processes consistent with the legitimate decision-making mechanisms of affected groups;
 - For cases of particularly significant potential adverse impacts that carry a high degree of risk to the physical, territorial or cultural integrity of the affected indigenous peoples or groups, the Bank will further require and verify that the project proponent demonstrate that it has, through a good faith negotiation process, obtained agreements regarding the operation and measures to address the adverse impacts as necessary to support, in the Bank's judgment, the socio-cultural viability of the operation.

¹⁸ <http://www.iadb.org/sds/doc/ind-111PoliticaS.pdf>

- ***Territories, land, and natural resources.*** Operations that directly or indirectly affect the legal status, possession, or management of territories, lands, or natural resources traditionally occupied or used by indigenous peoples will include specific safeguards, consistent with the applicable legal framework regarding ecosystem and land protection. One of those safeguards is respect for the rights recognized in accordance with the applicable legal norms. In projects for natural resource extraction and management and protected areas management, safeguards include
 - prior consultation mechanisms to preserve the physical, cultural, and economic integrity of the affected peoples and the sustainability of the protected areas and natural resources;
 - mechanisms for the participation of indigenous peoples in the utilization, administration and conservation of these resources;
 - fair compensation for any damage these peoples might suffer as a result of the project; and;
 - whenever possible, participation in project benefits.

Where legal or administrative protection is insufficient to ensure that the project will not directly or indirectly cause the deterioration of the physical integrity or legal status of the affected lands, territories or resources, the project will include the pertinent restrictions or corrective or compensatory measures.

- ***Indigenous Rights:*** The Bank will take into account respect for the rights of indigenous peoples and individuals as established in the applicable legal norms according to their relevance to Bank operations.
- ***Prevention of Exclusion for Ethnic Reasons:*** The Bank will not finance projects that exclude indigenous peoples on the basis of ethnicity. In Bank projects where implicit factors exist that exclude indigenous peoples and individuals from the benefits of Bank-funded activities on ethnic grounds, the project activities will include such corrective measures as:
 - informing indigenous organizations and individuals of their rights under labour, social, financial, and business legislation and of the recourse mechanisms available;
 - dissemination, training, and measures to eliminate barriers to benefits and resources such as credit, employment, business services, health services and education services, and other benefits generated or facilitated by the projects;
 - granting to indigenous workers, entrepreneurs, and beneficiaries the same protection afforded under national legislation to other individuals in similar sectors and categories, taking into account gender issues and ethnic segmentation in goods and labour markets, as well as linguistic factors; and
 - assuring equal opportunity for proposals submitted by indigenous peoples.
- ***Indigenous culture, identity, language, and traditional knowledge.*** In recognition of the special socio-cultural and linguistic characteristics of indigenous peoples, Bank operations will include such measures as are necessary to protect these assets from potential adverse impacts. In relevant projects, a consultation and good faith negotiation process will be used to identify the potential risks and impacts and to design and implement socio-culturally appropriate measures.

In case of commercial development of indigenous cultural and knowledge resources, the Bank will require prior agreement by the affected peoples that includes safeguards for intellectual property and traditional knowledge, as well as provisions for their equitable participation in the benefits derived from such commercial development.

CHECK LIST

LEGAL FRAMEWORK AND REGULATIONS

Members of indigenous peoples enjoy as human beings all human rights that have been recognised in several treaties and conventions on the subject. Moreover, there exists a consciousness regarding the particular vulnerability of indigenous peoples and their culture. For this reason, there is a specific international legislation and national, provincial, and regional laws, as well as standards to which one can voluntarily adhere.

Any company being interested in operating in indigenous territories or in their vicinity must consider the following:

- **General international regulations** concerning human, political, economic, and social rights
- **Specific international regulations** concerning Indigenous Peoples
- **National, regional, and local legislation** on Indigenous Peoples
- **Voluntary standards** from relevant international organizations

It is important, when designing a project, to identify and consider all regulations referring to the following issues:

Previous consent		Participation in EIA process	
Previous consultation		Traditional knowledge	
Participative monitoring		Territory	

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3.0 INTERACTION WITH INDIGENOUS PEOPLES

3.1 INTERACTION PROCESSES WITH INDIGENOUS PEOPLES

3.1.1 Definition of Indigenous Peoples

For many years there has been debate about the difficulties to define indigenous peoples, firstly because of the different names original peoples have received, and secondly because of the exclusion many of them have suffered; in many cases, their social recognition is still a tense matter, although there has been significant progress in the field of legislation and regulations¹⁹.

Thus, in different countries it is possible to find different denominations, such as traditional peoples, ethnic groups, ancestral peoples, native peoples, ethnic minorities, tribal peoples, ethnolinguistic groups, nationalities, and so on, which shows not only that there lacks a universal denomination, but also that there is no agreement on the way to approach the issue. For this reason, the UN says: *"...The international community has not adopted a definition of indigenous peoples and nowadays the opinion prevails that no universal definition is needed to recognise and protect their rights."*²⁰

Who constitutes Indigenous Peoples? How should they be identified?

- Groups with a common identity, who identify themselves as belonging to the same group or indigenous people, in reference to others;
- Groups who generally speak an original language, often combined with the official language;
- Groups who have a defined territorial and geographical location, have traditionally occupied this territory, and many have a legally recognised communal form of management of the land and common property rights;
- Groups who have communal forms of social organization and their own practices allowing them to reproduce themselves as a society and a culture, which distinguish them from other social groups, even in the same region or state;

¹⁹ During the 50's, "the International Labour Organization (ILO) started to refer to the problems of "indigenous populations in independent countries," that is to say, to geographically and culturally distinct communities without their own government, marginalized, and colonized within the borders of an independent country." UNDP and Indigenous Peoples: a Commitment Policy. http://www.iac-workspace.undp.org.co/fileadmin/Derechos_Humanos/Marcos_Conceptuales/UNDP_y_Pueblos_Indigenas_SP.pdf (p. 14)

²⁰ Guidelines on Indigenous Peoples' Issues. United Nations Development Group, (2008) p 8. http://www.un.org/esa/socdev/unpfii/documents/UNDG_Guidelines_indigenous_FINAL.pdf

- Groups who have their own forms of organization and representation, sometimes more developed, with regional and national connexions.

Criteria used by International Organizations ²¹:

SELF-IDENTIFICATION	
ILO	Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply. (169)
UN	Individually, a person is indigenous if he or she considers that he or she belongs to the group and is accepted by that group.
UNDP	They identify themselves as indigenous or tribal.
WB-IFC	Their own identification as members of a particular indigenous group and the recognition of this identity by others.
IADB	They describe themselves as belonging to pre-Columbian or indigenous peoples or cultures.
KEEPING THEIR OWN INSTITUTIONS IN THEIR TERRITORIES	
ILO	They maintain all of their social, economic, cultural and political institutions, or part of them.
UN	They have the determination to preserve, develop and transmit to future generations their traditional territories and their ethnic identity as the basis of their continued existence as a people, according to their own cultural patterns, their social institutions and their legal systems.
UNDP	They tend to keep their social, economic, and political institutions in their own lands.
WB-IFC	<ul style="list-style-type: none"> • Customary cultural, economic, social or political institutions are different from those of the dominating society. • An indigenous language, usually different from the official language of the country or region
IADB	Irrespective of their current location and legal situation, they keep part of or all institutions and social, economic, political, linguistic, and cultural practices
DISTINCTION FROM OTHER SECTORS OF THE NATIONAL COLLECTIVITY	
ILO	Their social, cultural and economic condition distinguishes them from other sectors of the national collectivity.
UN	They consider themselves different from other sectors of the society that now prevails in that region or country.
UNDP	Their aspiration is to remain culturally, geographically, and institutionally different, rather than to fully assimilate to the national society.
LOCATION OR GEOGRAPHICAL CONCENTRATION – HISTORICAL CONTINUITY	
ILO	They descend from populations which ancestrally inhabited a certain geographical area.
UN	Historical continuity can be related to the occupation of ancestral lands, common ancestry, common culture, language or other relevant factors.

²¹ **ILO:** ILO Convention 169 on Tribal and Indigenous Peoples in Independent Countries, Article 1. <http://www.ilo.org/ilolex/cgi-lex/convds.pl?C169> ; reviewed on August the 4th 2008

ONU: United Nations Permanent Forum for Indigenous Matters. <http://www.un.org/spanish/indigenas/2003/>; reviewed on June the 20th 2008.

UNDP: UNDP and Indigenous Peoples: a Commitment policy, p 14. http://www.lac-workspace.undp.org.co/fileadmin/Derechos_Humanos/Marcos_Concepuales/UNDP_y_Pueblos_Indigenas_SP.pdf; p. 2.

WB-IFC: (2005) World Bank Operations Manual. OP 4.10. World Bank, 12 p. Text translated from English: OP 4.10, Indigenous Peoples; pp. 2-3.

IADB: Albertos, Carmen (2006) Operational Guide. Operational Policy on Indigenous Peoples (PPI). Inter-american Development Bank; p. 38.

UNDP	They usually live in geographically distinct ancestral territories, or are still tied to them.
WB-IFC	A collective attachment to geographically defined habitats or ancestral territories and to natural resources obtained there.
IADB	They descend from peoples who inhabited the area at the time of conquest or colonization.

From a sociological point of view, it can be said that an indigenous people is a group of people that recognise themselves and are conscious of their ethnicity, share a common language, an ancestral territory, and their own values and traditions; that is to say, they maintain a distinct ethnic identity that must be legally recognised by the States where they live²². From a legal point of view, indigenous peoples are those who share a past and present, a similar identity and rights which are recognized by juridical status in the states where they locate²³. The Law views indigenous peoples as self-asserted sociocultural entities, different from the sum of the individual rights belonging to its members²⁴.

According to ILO Convention 169, the fundamental criterion to identify indigenous peoples is their own indigenous or tribal consciousness. These peoples must maintain their particular social, cultural, and economic condition distinguishing themselves from other sectors of the national collectivity, and they must be partially or totally ruled by their own customs and traditions. The aforementioned peoples must descend from indigenous peoples who occupied the territories of States previous to the establishment of national boundaries and must maintain all or part of their own social, economic, cultural, and political institutions.

In spite of this international framework for the protection of indigenous peoples, Latin American constitutions which have accepted the regulations of ILO Convention 169 are not uniform regarding criteria and definitions. For example, the following countries recognise indigenous peoples in their constitutions: Argentina, Bolivia, Colombia, Ecuador, Mexico, and Paraguay. Brazil uses the term "Indians", while Panama, Guatemala, Nicaragua, and Honduras name them "communities". In Guatemala and Paraguay the term "ethnic groups" is also used, while "indigenous groups" is used in Guatemala and Mexico, and "native cultures" in Honduras. Peru uses the term "indigenous", although pointing to the equivalence of other common terms: "The denomination "indigenous" includes and can be used as synonym for "original", "traditional, "ethnic", "ancestral", "native", or other names..." (Peruvian Constitution 1993: article 89).

Without diminishing the importance of this question, but with a view to actually succeeding in the protection of these peoples, their identification must be dictated by general reasons and not by terminology or concepts which could endanger the protection of their rights.

3.1.2 Characteristics of Indigenous Peoples Rights

The rights of Indigenous Peoples have the following characteristics:

They pre-exist the national State where they are located: Indigenous Peoples have rights which are prior and pre-eminent to the formation of States, keep their own culture and a collective territory, and their members

²² (Translated from the original version in Spanish) Source: Ballón Aguirre, Francisco. *Manual del Derecho de los Pueblos Indígenas. Doctrina, principios y normas*. Lima: Defensoría del Pueblo, 2004, p. 5

²³ *Ibid.* 22, p.13.

²⁴ *Ibid.* 22, p.42.

identify themselves as belonging to their group. That is why many Latin American constitutions explicitly accept the pre-existence of these peoples, previous to the creation of their States, and their recognition does not imply separation from the State, but inclusion and even protection as a subject of Law, entitled to a series of rights.

They are incontestable: That is to say, the rights of Indigenous Peoples persist and maintain their validity although national legislation denies them or ignores them. In this connexion, the validity of their rights does not depend on legal or administrative regulations.

They are specific: specific and collective rights of Indigenous Peoples only apply to them. Thus, they maintain legal authorities such as self-determination and autonomy.

They are contemporary: This is because they are to be resolved in the new conditions created by the State. They are not addressed to the restoration, resurgence or establishment of a right which was valid in the past.

They are Self-Asserted: Indigenous Peoples enjoy the right to have a legitimate representative organization.

3.1.3 Principal Rights of Indigenous Peoples and their Members

The essential right of Indigenous Peoples is the right to remain as such and be recognised by national legal systems as a group with a legal identity. This right has pre-eminence over any event concerning their recognition and protection and is the basis of all other rights they have as Indigenous Peoples.

This category allows them to enjoy the following rights:

Individual Specific Rights

With no detriment to the individual rights they enjoy as human beings, Indigenous Peoples enjoy the following specific rights, among others:

To Equality: Indigenous peoples have equal rights, duties and responsibilities. Therefore, no person can be subjected to discrimination, in particular because of their indigenous origin or identity.

Declaration of the Rights of Man and of the Citizen – Article 6;

Universal Declaration on Human Rights – Articles 1, 2 and 7;

International Covenant on Civil and Political Rights – Articles 2 and 26;

ILO Convention 169 – Article 3, paragraph 1;

UN Declaration on Indigenous Peoples' Rights – Article 2.

To their Customary Knowledge and Practices: Indigenous Peoples are entitled to the property of their collective knowledge (biological species, natural medicines, foods, art, music, among others):

Convention on Biological Diversity - Article 8 paragraph J;

Decision 486 by the Andean Community - Article 3;

Rio Declaration on Environment - Principle 22;

UN Declaration on Indigenous Peoples' Rights – Article 31.

To Access to Culturally Adequate Health Care and the Use of Traditional Medicines: Members of Indigenous Peoples must receive quality health care when they need it, with respect for their customs and traditions. Indigenous Peoples have a right to keep their medical practices and to maintain those plants, animals and minerals that are essential from a medical point of view.

ILO Convention 169 – Article 25;

UN Declaration on Indigenous Peoples' Rights – Article 24 paragraph 1.

To Labour Rights, adapted to their Indigenous Culture: Their right not to be labour discriminated as members of indigenous peoples must be respected.

ILO Convention 169 – Article 20;

UN Declaration on Indigenous Peoples' Rights – Article 17.

To their Religious Beliefs: Nobody can impose on them any religious belief different from the beliefs Indigenous Peoples profess.

UN Declaration on Indigenous Peoples' Rights – Article 12.

To the Political Representation of their Indigenous Condition: It implies the right to participate as members of an indigenous people in all instances of political decision-making.

ILO Convention 169 – Article 7;

UN Declaration on Indigenous Peoples' Rights – Article 5.

To Ethnic and Cultural Identity:

UN Declaration on Indigenous Peoples' Rights – Articles 9, 12, 13, 25.

Collective rights

Collective Rights of Indigenous Peoples are rights whose recognition and exercise are necessary to guarantee the very existence of these peoples. They are named collective because they belong to the whole people and not to each particular individual.

No person that is not indigenous can claim any of the following rights:

Self-Affirmation: This right allows indigenous peoples to define themselves as such before a third party.

Self-Definition: Related to the previous right, the right to self-definition applies to members of indigenous peoples. That is to say, these are the unique and distinct characteristics a person must have to be a member of an indigenous people.

Patrimony: It is the right they maintain over their territory and the participation, use, administration and conservation of natural resources present in their territories.

Internal Autonomy: The right by which every indigenous people chooses its own organization, creating and managing its own institutions.

Consultation and participation: Both rights are closely related. While the right to consultation applies when legislative or administrative matters can affect Indigenous Peoples,

the right to participation is recognised as an indispensable means allowing interested groups to take part in decision making at any government level, including legislation and administration.

Indigenous Jurisdiction: This is the right to impart justice with their own authorities, applying their own norms, within their territory and among their own members, always respecting universal human rights.

3.1.4 Obligations of the state

Latin America and the Caribbean have started the 21st century with an expansive process to recognise Indigenous Peoples legal and political rights in many countries, sometimes obtaining direct representation in the highest public levels, Bolivia being an example of this situation.

As part of the same rights recognition process, national constitutions acknowledge the existence of these peoples: "All this can be seen, for instance, in the new framework of regulations in Bolivia, Colombia, and Ecuador. The new rules promote indigenous autonomy and control over their own development, which is necessarily tied to the concept of territorial area."²⁵

Some States recognise the multicultural, multiethnic and multilingual character of their societies.

The main obligations are:

Protection: As these peoples are particularly vulnerable, they have the right to be protected by the State where they live. Therefore, state institutions have the obligation to take active measures so that these rights are exercised and effective.

Appropriate institutions: The States are obliged to establish mechanisms (policies, institutions, regulations, among others) favorable to the representation and protection of indigenous peoples.

Consultations: The right to be consulted is a special guarantee for Indigenous Peoples, aimed at knowing the explicit and formal opinion Indigenous Peoples have about measures (legislative or administrative) which could affect them.

Creation of conditions for the full exercise of these rights: This implies that the States have the task of adapting their administrative, political and legal organization to the recognition and existence of these rights.

Today some specific situations are officially recognised, such as Transboundary Indigenous Peoples (on both sides of a national border) and isolated or uncontacted Indigenous Peoples. Hence, the Inter-American Development Bank (IADB) affirms that "Although some differences and nuances remain regarding the denomination of these peoples in certain countries, they are generally recognised as "traditional peoples". Attention must be paid to two particular situations:

Transboundary Indigenous Peoples: When two or more countries develop regional projects in areas where Indigenous Peoples live, the Bank will take the necessary measures to avoid negative effects on transboundary peoples, such as:

Consultation and negotiation processes carried out in good faith.

²⁵ Plant, Roger y Hvalkof, Soren (2002) Titulation de Tierras y Indigenous Peoples. IADB - Banco Inter-americano de Desarrollo, Washington D.C., p. 35.

Legal security and territorial control programs; and,

Other culturally appropriate programs, related to rights and priorities in areas such as health, free transit, double nationality (in the context of applicable regulations), economic, social, and cultural integration among peoples, without detriment to other measures.

Uncontacted Indigenous Peoples: Taking into account the exceptional nature and special vulnerability of these peoples, as well as the impossibility to apply previous consultation negotiation mechanisms, the Bank will only finance projects respecting the rights of these peoples to remain in this situation and to live freely according to their culture. Accordingly, to safeguard their physical, territorial, and cultural integrity, any project which could affect these peoples, their lands or territories, or their lifestyles, must include socially and culturally appropriate measures to recognise, respect, and protect their lands, territories, environment, health, and culture; and to avoid contact with them as a consequence of the project". (IADB Operational Policy on Indigenous Peoples and Strategy for Indigenous Development.)²⁶

Peruvian legislation (Bill for Protection of Indigenous Peoples in Isolation and Initial Contact Situation, National Congress - April 2006) includes the following definitions:

- "Isolation – Situation of an indigenous people, or part of it, occurring when it has not developed firm relations with other members of the national society, or having done so, has chosen to discontinue them";
- Initial Contact – Situation where an indigenous people or part of it has begun an interrelation process with other members of the national society;
- Indigenous Reservations – Lands that the Peruvian State decrees transitorily intangible, favoring Indigenous Peoples in isolation or initial contact situations, as long as such situations prolong themselves, in order to protect their rights, habitat, and the conditions ensuring their integrity as peoples".

²⁶ "Isolated or Uncontacted Indigenous Peoples. "Uncontacted or voluntarily isolated peoples" are those who have no contact with outside society or, having just been contacted, wish to remain isolated. Naming is problematic because these peoples have isolated after traumatic first contact experiences, as happened with the rubber plantations. It is not correct to call them "voluntarily isolated peoples", since their moving to refuge areas was involuntary. It is also confusing to call them "peoples in isolation" because this name might include peoples who live in relative geographical isolation but without the wish to remain isolated. The policy refers to peoples living in refuge areas in the Amazon Jungle or the Chaco and not wishing to establish contact with Western civilization. These peoples find themselves in border areas between Guyana, Venezuela and Brazil (Yanomamo) and the borders between Brazil, Peru and Northern Bolivia (generally Pano and Arawak). There are other isolated areas where these peoples live, in Colombia (nukak) and Ecuador (part of the Huaorani). All of them are extremely vulnerable in case of contact, physically and culturally, and are exposed to the advance of the farming (Brazil), mining and hydrocarbon exploitation borders. Their lack of defenses against viral and infectious diseases makes them physically vulnerable in terms of survival. Hence, the policy's proposal is to respect their status and protect them from contacts which could threaten their physical, cultural and territorial integrity." Albertos, Carmen (2006) Operating Guides. Operating Policy on Indigenous Peoples (OPI). Inter-american Development Bank p. 38.

CHECK LIST

PROCESSES OF INTERACTION WITH INDIGENOUS COMMUNITIES

During the interaction process between a company and indigenous communities, it is necessary to recognize the universal rights of Indigenous Peoples, of the existent cultural diversity and the general characteristics which define an indigenous people, as well as the consideration of local ways of manifestation within this diversity.

Definition of Indigenous Peoples

There exist different names given to Indigenous Peoples (traditional, ancestral, original, tribal, native, aboriginal peoples, etc.) as well as different criteria to define them (common identity, language, reference territory, historical continuity, their own sociocultural, political, and economic organization, etc.)

Therefore, a project must:

Identify the generic national denomination for an indigenous people

Identify the local auto denomination

Identify the criteria which are used to identify as indigenous the communities with which the company will interact

Rights of Indigenous Peoples

The essential right of Indigenous Peoples is their right to remain, express themselves and be recognized as entities with legal identity by national legal systems. From the category of "Indigenous People" a series of individual and collective rights are derived.

A project must recognize, consider and respect the following rights:

Individual Rights

To Equality		Specific labour rights	
To their Collective Knowledge		Religious beliefs	
Traditional Practices		Specific Political Representation	
Culturally appropriate health and education services		Ethnic and Cultural Identity	

Collective Rights

Self-assertion		Internal Autonomy	
Self-definition		Consultation and participation	

Patrimony

Indigenous Jurisdiction

Obligations of the State

A National State has a series of obligations towards Indigenous Peoples

The main obligations of a State are:

Protection

Creation of adequate institutions

Consultation

Creation of conditions for the exercise of every right

Particular situations of Indigenous Communities

Because of their cultural characteristics, some Indigenous Peoples present distinct challenges to the design and execution of a project.

Therefore, a project must identify:

Transboundary Indigenous Peoples

Uncontacted Indigenous Peoples

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3.2 CHARACTERIZATION OF INDIGENOUS COMMUNITIES

Characterizing means identifying the particular and substantial features of a human society or group; a group with which dialogue is sought about possible impacts (positive as well as negative) of a given project on the whole of the community or on different subgroups (women, adult men, children, youth, old people). The idea is to establish a transparent dialogue respecting their own organization methods and authority systems, to know their worries and demands in order to create projects supporting the development of the community and improving their standard of living.

In the case of Indigenous Peoples, the starting point is to account for their existence as a culture and a group, paying attention to their IDENTITY and their belonging to a territory. Although situations vary among countries or within a given country, it can be asserted that when there are higher levels of legal recognition of indigenous communities, they must fulfil the following to be "recognised as such":

- They must be structured according to their statutory practices, customs or dispositions;
- They must name themselves with a common name known by its inhabitants and neighbours;
- Have identifiable geographical limits, with territorial continuity; and
- Be recognised by its inhabitants and neighbours;
- They must have their own legal authorities, chosen and/or recognised by their members" ²⁷.

3.2.1 Methods

In oil and gas projects, usually there are two situations which help determine the frame of reference for analysis:

- a) ***A delimited operation or execution area***, as happens with exploration and extraction; construction of petrochemical complexes, pumping stations, refineries, processing plants, etc. These cases often present less complexity, generally located within the territory of an ethnic group.
- b) ***An extended operation and execution area***, as happens with the construction of pipelines (for oil and gas transportation); in these cases and depending on the country, the possibility of operating in the area of several Indigenous Peoples or Groups is high (particularly in the cases of Peru, Bolivia, Colombia, Mexico).

Therefore, the extension of the characterization will depend on the situation which occurs.

Characterization must consider three basic dimensions:

- ***Space***: takes into account the space occupation process as well as the use and management of natural resources and territory by the population and its actors; it also includes the territorial scope of the analysis.
- ***Time***: three key aspects related to: the project's duration; the process of socioeconomic and environmental changes in the area; the access and utilization means that Indigenous Peoples

²⁷ Luis Pereira Stambuk 1999 Criterios de identificación del origen étnico con especial referencia a los Indigenous Peoples y originarios. CEPAL/CELADE 1999 América Latina: aspectos conceptuales de los censos del 2000 (352) (Seminario Censos 2000: diseño conceptual y temas a investigar en América Latina).

have a given space and its natural resources. It is important to consider seasonal changes; for instance, fluvial dynamics can be associated to seasonal precipitations producing high and low water levels influencing the use of space and movements of local societies.

- **Gender Perspective:** related to environment (gender and environment); social aspects (differences in access to education and health); culture (roles and functions according to sex); and participation in communal or family decision-making.

For a basic characterization:

- **Cultural Specificity:** To which group do they belong? How do they define themselves?
- **Social and demographic characteristics:** How many are there? What is their demographic structure?
- **Territories that they occupy and use:** Where do they live? What are their lands and territory?
- **Organization:** Are they organized as legal-administrative entities (e.g. Communities, Reservations)?

For a more complex characterization

- **Lands and territories:** How do they use space? What are the physical and biological characteristics of these spaces?
- **Interaction with other members of society:** What are the levels and mechanisms of interaction with other groups and with the dominating Nation State?
- **Representative character and organization:** What organization forms do they have? Who can access representation? What are their mechanisms? Are women included and recognised by authorities of the community?
- **What are the regulations and legal framework they live according to?**
- **Culture:** What are the main characteristics? What is their view of the world and their perception of the hydrocarbon industry? What are their internal codes and norms?
- **What projects for communal and local development are present in the area? What kind of development do they want? What kind of support do they receive, and from which institutions?**

Regarding the identification of Indigenous Peoples in the area:

- a) **Identity and self-identification:** how individuals identify themselves as members of a group or culture.
- b) **Language:** The language they speak and the language they learned in their childhood (bilingualism is increasingly widespread).
- c) **Usual Residence Area or Geographical Belonging:** in countries where the State has recognised the territorial rights of Indigenous Peoples, these rights are manifested through legal and administrative regulations (e.g. the Amazon Native Communities in Peru; or the Colombian Reservations).
- d) **Legal Status:** recognition of indigenous property of lands and point of the property recognition process that has been attained.

The combination of these four elements allow for the creation of a more accurate profile of the indigenous people or group in the area. However, it is necessary to know other associated indicators in order to achieve a more complete characterization of the Indigenous Peoples in the area and the socioeconomic conditions in which they find themselves.

3.2.2 Prioritized aspects for characterization

These are key aspects for the characterization of indigenous communities and their socioeconomic conditions.

TABLE 3 – PRIORITIZED ASPECTS FOR CHARACTERIZATION

Topics	Aspects to Consider	Sources of Information
Identification Indigenous Peoples	Identity and Self-identification	National Surveys. Indigenous Peoples Surveys. Databases of Collective Property Systems.
	Language	
	Residence-place	
	Legal Status, Type of Ownership Over the Land.	
Organization	Type and Level (Federations, Communal Authorities, etc.)	Registers and Electoral Rolls
Demography	Population Number	National Surveys. Surveys of Indigenous Peoples
	Sex and Age Distribution	
	Education Level by Sex and Age	
	Main Occupation	
Health	Principal Diseases	Health Surveys. Specialized Organizations Reports
Human Development Rate	Level. Life Expectation.	UNDP-Reports on Human Development
Poverty	Unsatisfied Basic Needs	State Reports
Occupation and Employment	Types of Job. Survival Activities.	Surveys, Specific Studies on Populations of the Area
Social Infrastructure	School and Health Posts	Databases and Sector Reports
Access and Transportation	By Land: highways, roads. By Air: Landing runways, service frequency By Water: rivers, ports. Transportation routes.	Specialized Organizations Reports, public or private
Communications	Telephone, Radio, TV, Internet	National Surveys on Housing and Population. Sector Statistics
Religion	Churches and Prevailing Religion	National Population Surveys. Indigenous Peoples Surveys. Household Surveys.

3.2.3 Cartography of Territories and Localities

"Indigenous Territory: It is the habitat of Indigenous Peoples, including not only areas which they regularly and permanently own, but also those which they do not own in this manner, but constitute the space where they carry out their social, economic, and traditional activities (e. g. sacred places, protected areas, hunting, fishing, and fruit gathering lands, lands reserved for agriculture, among others), and it represents the necessary geographical space for the group's social and cultural reproduction. This definition is consistent with that given of "territory" by ILO Convention 169. In the context of the OPI it is worth mentioning that the relevant safeguards require that the project does not deteriorate, directly or indirectly, the physical integrity or legal status of lands, territories, or resources of Indigenous Peoples, which does not imply that the Bank shall take an active part in case of disputes and activities compatibles with the territories' status quo can be contemplated."

Albertos, Carmen (2006) Guías Operativas. Política Operativa sobre Pueblos Indígenas (PPI). Banco Interamericano de Desarrollo, Pp. 38 -39.

Although legislations in several Latin American countries refer to the communal property rights indigenous communities have over their territories, the situation varies regarding the status of this ownership. Many countries have not finished the process of delimitation, registry, and creation of property deeds. Hence, some property deeds are not properly registered; others were not made following appropriate geographical references, which makes it difficult to determine their boundaries; in some other cases lawsuits arise due to property deeds with opposing claims on lands. However, it is crucial to have the information and if possible to approach the starting situation in the area where the project will be developed. This first approach or scoping can nowadays be made using secondary information, which must later be specified in situ according to more direct and participation based methods.

Analysis based on Secondary Information

Today many sources of information exist, spatial as well as digital and legal, which give a basis for a first social and environmental cartography before a first contact with the population is established through direct presence in the area.

- Satellite imaging: give a geographical reference of the area, including landmarks such as water bodies, type of forests, soil type, occupied areas, etc., which facilitate the analysis of a particular environment. Some of these images provide information about small details;
- Population and Housing Surveys;
- Communities and legal status databases;
- Location of populated centres;
- Location of social infrastructure (schools, health services);
- Protected areas;
- Communications Infrastructure.

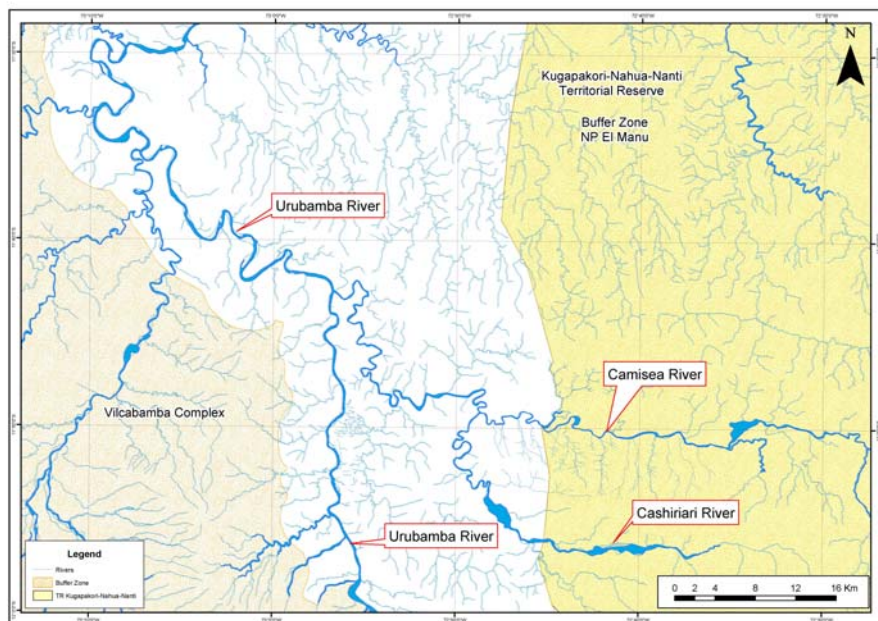
How to create a cartography with secondary information

Step 1. Digital and geographically referenced databases are required, with information provided by specialized sources with appropriate technical means, from the public or private sector. For example in Peru the basic information comes from Instituto Geográfico Nacional (the National Geographic Institute), the databases from the Programa de Titulación de Tierras (Land Titling Program), the Instituto del Bien Común (Institute of General Welfare) (2007) and the Instituto Nacional de Recursos Naturales (National Institute of Natural Resources) for protected natural areas and buffer zones. For lands corresponding to property deeds, information from Proyecto Especial de Titulación de Tierras (PETT, Land Titling Special Project) is used.

For a general interpretation of the regional characteristics when the project has an extended area, a scale ranging from 1:300.000 and 1:100.000 is recommended. For example, the scale used in Camisea was 1:220.000. When the project is developed in a delimited area scales lower than 1:100.000 are recommended.

In the following examples a 1:220.000 scale was used.

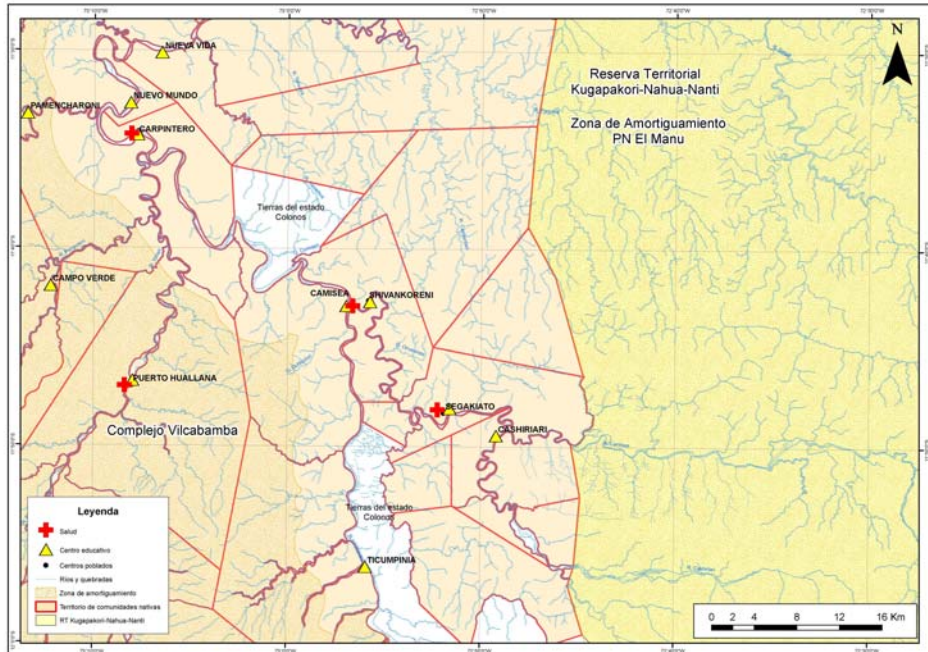
FIGURE 6 – EXAMPLE OF HOW TO CREATE A CARTOGRAPHY WITH SECONDARY INFORMATION



Step 2. Overlap spatial indicators for: geographical area, water bodies, indigenous territories (recognised or with presence of ethnic or linguistic groups); populated centers; protected areas; infrastructure (roads, airports, ports, schools, health services), mining concessions, forest concessions, etc.

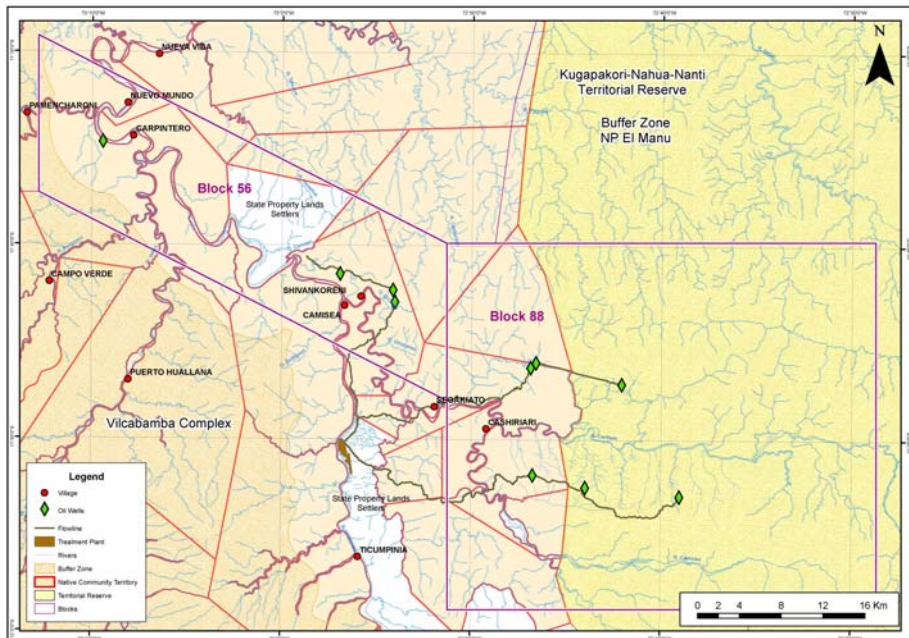
In this example, information from databases about legally recognised Indigenous Communities territories and databases about populated centers and health and service infrastructure was used.

FIGURE 7 – EXAMPLE OF HOW TO CREATE A CARTOGRAPHY WITH SECONDARY INFORMATION



Step 3. Analysis: All previous aspects must be combined with Lot or Concession Areas Delimitation, and/or project working zones, as a crucial element for a spatial analysis of the area.

FIGURE 8 – EXAMPLE OF HOW TO CREATE A CARTOGRAPHY WITH SECONDARY INFORMATION



3.3 STAKEHOLDERS IDENTIFICATION

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Identification of stakeholders is carried out to determine who will be directly or indirectly affected by a project, and who could collaborate or interfere with its development.

Guidelines for the Identification of Stakeholders or interest groups

a) Identify groups affected by the project and their characteristics

Concerned parties that can be directly or indirectly affected by the project, whether positively or negatively, can include the following:

- People who own lands or goods affected by the project, inside the execution area of the project or outside it;
- People who use agriculture lands and/or natural resources such as forests or rivers;
- Illegal settlers in the area;
- Immigrants attracted by the project and its potential labour benefits before its implementation;
- Organizations and institutions affected by the project, such as development, women, farmers, fishing, and religious associations;
- People in unfavourable situations and without a voice, such as low income people and local women;
- People who live in areas identified for resettlement;
- Indigenous or tribal peoples with a special tie to their land, or having rights over territories and resources and/or cultural rights;
- Peoples and social groups explicitly and specifically protected by national or international laws;
- People who live in populated centres who could potentially offer resources as a labour force.

b) Identifying other stakeholders or interest groups

Besides people affected by the project, there can be other concerned parties who could have an influence on the project, mainly because they can contribute their knowledge or ideas to improve the project or mitigate its environmental and social impact, or because they have a political influence on the project and must be taken into account. Among these relevant stakeholders are:

- Politicians;
- Local Government Authorities;
- Industrial and commercial businesses, including suppliers, clients and contractors;

²⁸ Source: Doing Better Business Through Effective Public Consultation and Disclosure. A Good Practice Manual. IFC 1998

- Unions;
- Environmental and social national government agencies;
- Media;
- Non governmental local and national environmental and social agencies;
- International activist groups;
- Research Institutes;
- Universities.

c) Identifying the Stakeholders' representatives and establishing communication

Identifying and consulting with stakeholders' representatives, particularly with community leaders, can be an efficient way to spread information across a great number of interested people and receive information from them.

The stakeholders representatives can be

- Regional, local council, or local Representatives;
- Traditional Representatives, such as the community chief, and religious leaders;
- Leaders (presidents, directors) of local cooperatives, other communal organizations, local NGOs, and local women's organization;

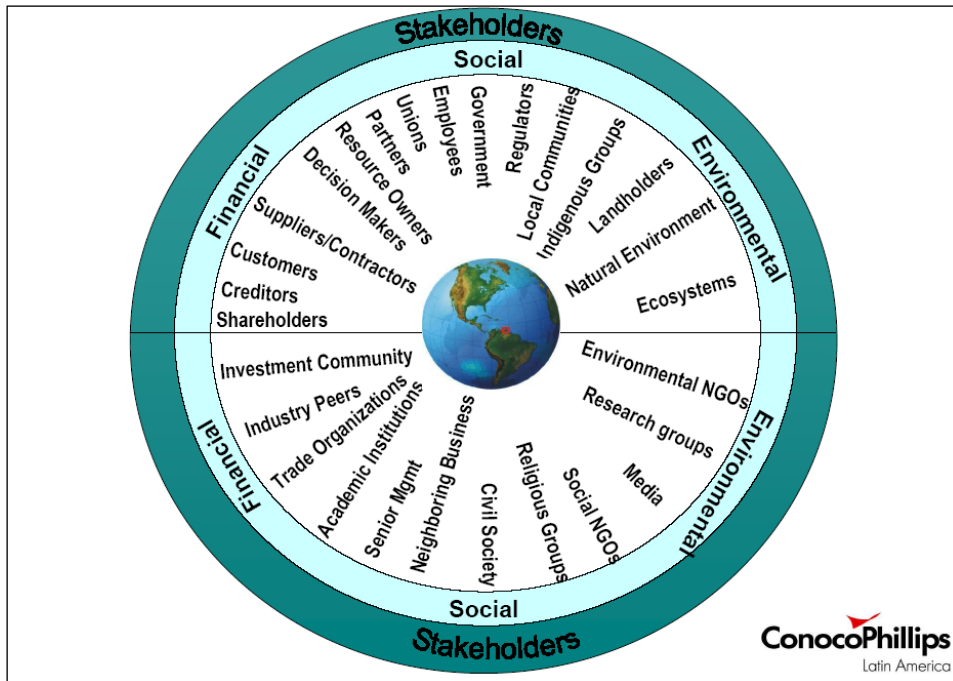
Useful Questions

The following questions can help the project's sponsor identify stakeholders and interest groups and to consult with them successfully:

- Who will be affected by the negative and environmental impact of the project, inside its area as well as outside of it?;
- Who will benefit from the project apart from the sponsor and investors?;
- Who will be responsible for the implementation of measures to prevent, mitigate and compensate for the negative aspects of the project?;
- Which groups or organizations are able to monitor the fulfilment of the measures?;
- What cooperation, experience, or influence will be useful for the project's success?;
- Who are the more vulnerable, least visible and voiceless, for whom special efforts will be made during the consultation process?;
- Who supports the changes the project will bring about, or opposes them?;
- Whose opposition could endanger the project's success?

The company Conoco Phillips uses the following graph to disaggregate the scope of possible stakeholders. (Fig. 9)

FIGURE 9 - SCOPE OF POSSIBLE STAKEHOLDERS – CONOCO PHILLIPS



CHECK LIST

CHARACTERIZATION OF INDIGENOUS COMMUNITIES

Characterizing means identifying the particular and substantial features of a human society or group. In the case of Indigenous Peoples, the starting point is to account for their existence as a culture and a group, paying attention to their identity and their belonging to a territory.

Analysis Reference Area

Identify whether the area is:

a delimited execution or operation area

an extended execution or operation area

Characterization Dimensions:

The following have been considered:

Space

- Space occupation;
- Use and management of natural resources;
- Use and management of land;
- Territorial coverage of the analysis.

Time

- Duration of the project;
- Socioeconomic and environmental change processes;
- Access to the area and space use (e.g. territoriality).

Gender Perspective

- Environment;
- Social Aspects;
- Cultural aspects;
- Participation in decision making (family and community levels).

Prioritized Aspects for Characterization

The following have been considered:

Identification Indigenous Peoples	Identity and self-identification	
	Language	
	Residence place	
	Legal status, type of ownership over the land.	
Organization	Type and level of organization	
Demography	Population number	
	Structure by sex and age	

	Educational level by sex and age	
	Main occupation	
Health	Main diseases	
Human development rate	Hdt level. Life expectation.	
Poverty	Unsatisfied basic needs	
Occupation and employment	Types of job	
	Survival activities	
Social infrastructure	Educative infrastructure	
	Health infrastructure	
Access and transportation	By land: highways, roads and transportation routes.	
	By air: landing runways, service frequency	
	Fluvial: rivers, ports.	
Communication	Telephone, radio, tv, internet	
Religion	Churches and main religions	

The following have been made:

Cartography of territory and localities	
Identification of Stakeholders	

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- **Stambuk, Luis Pereira.** Criterios de identificación del origen étnico con especial referencia a los pueblos indígenas y originarios. EN CEPAL/CELADE1999 América Latina: aspectos conceptuales de los censos del 2000 (Seminario Censos 2000: diseño conceptual y temas a investigar en America Latina) pag 352. 1999

3.4 PROCESS OF PARTICIPATION AND CONSULTATION WITH INDIGENOUS COMMUNITIES

"Consistent with United Nations conventions such as ILO Convention 169, UNDP promotes and supports the right of indigenous peoples to free, prior informed consent with regard to development planning and programming that may affect them"²⁹

3.4.1 A framework for Interaction and Strategy with Communities

For companies wishing to develop projects in areas where Indigenous Peoples live, it is a priority and main principle to recognise indigenous peoples' rights. Companies should recognise that these people not only live there but are also bound to that land by their history, related to different endeavours to become visible in the eyes of the dominating society and that the recognition of these rights is a collective conquest after long processes in which members

of several generations of their society took part.

For the local population, the project to be developed "comes from the outside" and represents strange and unknown prospects, which at first could threaten their peace, their property or their way of life, as some previous experiences related to extraction projects have justified these fears. Nowadays the presence of these projects is expected to be an opportunity for improving the standard of living of these populations, and now the companies face the task of not only saying this, but also proving it right.

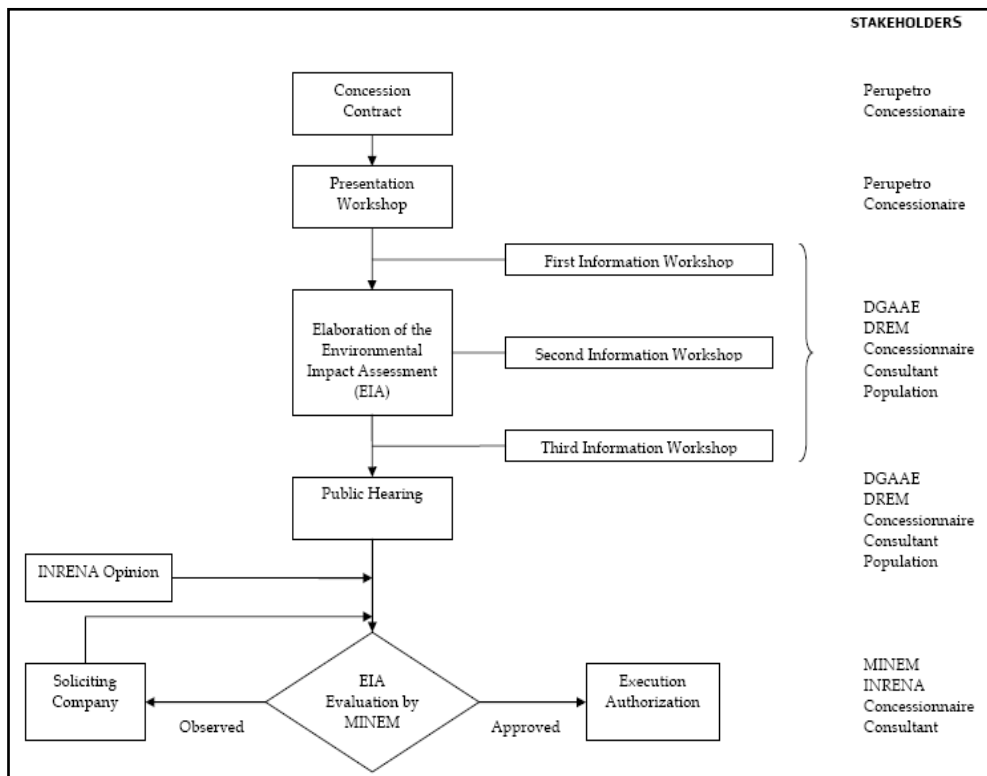
Positive consultation processes are based on: RIGHTS RECOGNITION, TRUST and RESPECT between all actors; also crucial is to have accessible, transparent, relevant, and understandable information (that is to say, culturally adequate in form and content) as a basis for decision making. The community's participation must be free of coercion and any form of intimidation.

In the initial stages the consultation process is promoted and called upon by the State, which must inform the local population of the project to be executed. However, the consultation process depends on three fundamental parts: State, industry and communities - Indigenous Peoples in the project area, where each concerned part has needs and expectations regarding the project³⁰ or the other parts; moreover, each actor has different abilities and cultural points of view which must be recognised for the interaction to be transparent and fluid. In many countries participation is obligatory and regulated by the state. For instance, in Peru, the official process (in force in 2006) was the following: (Fig. 10)

²⁹ UNDP and Indigenous Peoples: A Policy of Engagement. 14 p. http://www.lac-workspace.undp.org.co/fileadmin/Derechos_Humanos/Marcos_Conceptuales/PNUD_y_Pueblos_Indigenas_ENG.pdf

³⁰ (Translated from the original version in spanish) *Marco de referencia para facilitar el proceso normativo socio-ambiental: diálogo tripartito – gobierno, pueblos indígenas e industria- en la cuenca sub-andina*. Programa Energía, Ambiente y Población, Módulo: Perfeccionamiento de los Marcos Regulatorios, 2003. Pag 12

FIGURE 10 – OFFICIAL PROCESS



Source: ERM-Perú 2006

The relationship strategy considers that it is crucial to show respect for existing organizations and their representatives, and to make sure that all of them have been called to participate in the process.

To achieve a fluent and respectful interaction, it is also crucial to take into account that social processes answer to different timings: the State can be in a hurry for the project to begin, the company too, but the community members need time to inform themselves, understand and come to terms with the project's presence in their area or territory. They have their own social time and do not answer to the urgency that other actors may feel.

Step 1: Calling to Public Consultation

- Establishing formal contact with legitimate authorities chosen by communities and peoples. The first contact with the communities must be made by the State, who must call all parties to open up the consultation process.

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

(2007) United Nations Declaration on Indigenous Peoples Rights. Approved by General Assembly. Article 19, UN, Pp 12. New York.

- The call must be inclusive and open to all, and respect the peoples' customs and habits; it should be made through appropriate communication means (including language, media, and coverage). The

call must include community leaders as well as traditional and non-traditional basic organizations of this community (e.g. mothers clubs, youth associations, annex representatives, etc.) local state agencies, national and regional organizations of Indigenous Peoples; NGO's and other stakeholders with interests in the area; no kind of interest can be excluded.

- It must be made sure that the venue for the first meeting (Workshop, Hearing, or any other established form in different countries) is accessible to the population and their representatives. If necessary, it must be made in different locations; the regional and national levels must not be dismissed when consulting.
- The date and time must be chosen so to ensure as much participation as possible, particularly from populations such as women, which will have a direct influence on the project. The call must give everybody enough time to receive and process the information, make relevant questions at local levels and make arrangements with their communities and organizations in order to attend the meeting.
- The presentation of the company and its project must be publicly made, in a location accessible to all members of the population.

It is advisable to send a description of the project to all local authorities some time in advance (Indigenous Peoples' Authorities as well as legal-administrative authorities in the area) in order to make sure that the audience will already be informed, and present their own questions, remarks and doubts about the Project.

Step 2: Presentation of the project and the company

The company's representatives must be chosen according to their ability for intercultural dialogue.

- They must present in a clear and transparent way the project they want to carry out, its reach, duration, and operation areas.
- The presentation must be made in the main local language or languages, with an appropriate translation, accepted by local authorities.
- The presentation must use appropriate maps and graphs, explained in an appropriate way, in a clear and transparent language.
- A copy of the presentation must be translated to the local language and left in the hands of the local authorities. It is recommended to provide a map describing the areas where operations will take place; it is a reliable tool for communication and allows the population to assess its scope and reach, and to get a better understanding of it.
- The audience must be encouraged to ask questions, as all forms of participation are important. They must be answered with clarity and honesty, and no false expectations should be created in order to avoid a difficult point.
- The company should provide direct communication channels, appropriate and accessible to the whole population (officers and representatives names, important addresses, attention times, phone numbers, Web pages, emails, etc.)
- It must be clear who the relevant interlocutors and representatives are and which individuals are responsible for which stakeholder in the consultation process.

This consultation does not exhaust all doubts, questions, and suggestions: it is just the first step towards building a positive relationship, albeit possibly wrought with tension and criticism; it provides a chance to reach an agreement or consensus. Prior consultation is a right Indigenous Peoples are entitled to, not just a bureaucratic stage.

Step 3: Permanent Communication, open dialogue, fluid relations, agreements based on knowledge and information.

This step is about building a relationship of communication flowing both ways; in other words, dialogue and information reception spaces.

- The company must keep a relationship system with all primary actors and stakeholders, and secondary ones when possible, regardless of the compulsoriness of these relationships according to the country's laws and regulations.
- The company should publish and transmit to all representatives and stakeholders all the information it is processing throughout the project. For instance, all Reference Terms and content from Environmental Impact Studies must be made public for indigenous organizations, research centers, NGO's, etc., so that they can react accordingly.
- Periodic meetings with different sectors should be scheduled, including representatives from indigenous communities, so that they receive from the company firsthand information about any aspect of the project which might directly affect them. Listening to their points of view, explaining them and considering them is the key for understanding and trust. The information must be given in an appropriate way, in the language of the local communities. Meetings are also useful for the communities, as there they can express their worries and expectations about the company or the project, and other matters.

Documenting the consultation process: no matter the way communications are established, they must be duly recorded, from the first calling or invitation. The dialogues and agreements which occur during consultation should be made public. This allows all actors to follow the process, its evolutions, agreements and their fulfilment. This is an important instrument for fulfilling the goal of building transparency and trust.

In Peru, for example, there is legislation about documentation of the consultation process:

"An Internal Record of Citizen Participation shall be created, under the responsibility of the DGAA. All organizations concerned in Citizenship Participation, derived from negotiation or Contract Bid for Hydrocarbon Exploration and/or Exploitation and Environmental Studies creation and assessment, shall be obliged, under their own responsibility, to provide complete information of any proceedings related to the application of the present DGAAE Regulation, seven days after such proceedings took place."³¹

Reports are one of the good practices for companies committed to Social Responsibility. They require the following³²:

³¹ Reglamento de Participación Ciudadana para la realización de actividades de hidrocarburos. DS N° 012-2008-EM. Article VII. Registro de actuaciones Perú, 2008. (Peruvian Citizenship Participation Regulation)

³² Global Reporting Initiative (2002) Sustainability Reporting Guidelines – <http://www.globalreporting.org/guidelines/2002/contents.asp>

- Transparency – reports must make explicit processes, proceedings and hypotheses applied during their preparation,,
- Inclusion – they must constantly ask stakeholders for comments and opinions,
- Being Audited – internal or external auditors must have a chance to certify that the information given by the report is reliable (in this case accurate documentation, data gathering and analysis are necessary).
- Being Exhaustive – reports must contain all the information users might need to assess the organization's economic, environmental and social performance,
- Precision – it is necessary to make sure that the information included is accurate enough in relation to its planned utilization, and that reasonable guarantees concerning its integrity are offered.
- Neutrality – the presentation of the report and the information it contains must offer a well-balanced perspective on the company's performance and avoid any bias,
- Comparability – it must be possible to make comparisons in order to achieve a good benchmarking of the company's performance and assess the evolution of Corporate Responsibility initiatives,
- Clarity – the report must be detailed enough and at the same time make sure that the information is understandable and usable by different stakeholders with varying needs and backgrounds, and
- Timely – reports must provide information on a regular basis." ³³

3.4.2 Consultation: Culture based approach

³⁴

The relationships that are established between Indigenous Peoples and the company must be based on the company's recognition of the particular characteristics of indigenous groups. In some countries, there are relevant legislations

concerning the manner and moment in which consultation processes must take place³⁵; the first contacts to be established can have an influence upon future relationships.

The following elements must be taken into account during the consultation process:

- *Carry out previous consultations when possible:* As a first step, it is necessary to determine which communities could possibly be affected by the project and establish a first contact with its representatives to agree on the topics to be discussed during the process (such as adequate representative character, consultation scheduling, means, procedures and methodology, as well as the role to be played by the State during the process); besides, it is desired that the indigenous groups have a clear idea of the fundamental aspects of the project and the objectives of the process.
- *Selecting adequate representatives:* It must be remembered that leaders cannot stand for the whole population, more so if there exist differences within the indigenous group; for this reason it can be appropriate to invite other people who could represent another population sector, in order to

³³ Directrices para la implementación de la responsabilidad social corporativa: Elementos, indicadores y notificación para las empresas miembro de ARPEL. Guía Social de ARPELN°2,ESSA, Uruguay, 2005, p. 2.

³⁴ Relaciones con la comunidad y otros actores sociales: Manual de prácticas recomendadas para las empresas que hacen negocios en mercados emergentes. Corporation Financiera Internacional, 2007, p. 47.

³⁵ See Annex 1, this section.

achieve a wider representation (including elder people, women and/or youths, religious groups, etc.).

- *Determining which matters will be given priority during the consultations:* During previous consultations it is possible to determine which matters are priorities for the population, for example: scheduling (which must take into account the time they need for decision making), the kind of projects and their impacts (positive and negative), compensations, participation of the population in the project's design, and application of measures regarding prevention, mitigation, and remediation, reparation in case of damages or losses, compensation for the use of the land. Other important topics include access to indigenous lands, identification and protection of culturally important places and control over the arrival of foreign workers. Moreover, methods are discussed to identify which Indigenous Peoples will be affected, the way to obtain legal advice if that were necessary, and appropriate communication channels.
- *Paying special attention in order to transmit information in a culturally appropriate way:* It is essential to make sure that the concerned indigenous population understands the kind and scope of the project's impacts as well as its benefits and the measures suggested for mitigation. Also crucial is that the project leaders pay due attention and listen to the population's impressions and worries; its members can often identify possible impacts and adequate prevention measures. Relevant information can be translated to their language, and different media can be used: audiovisual material, radio broadcasts, informative meetings.
- *Sharing with the government the responsibility to spread information and carry out consultations:* In cases when the government is forced to establish communication with Indigenous Peoples before private companies do, it is important to take into account the results of these contacts in order to respect previous engagements or to discuss matters still to be solved. Besides, it is possible that at certain stages of the project, the government is no longer present during consultations; while in other cases, the company can consult with the population in a more autonomous way.

Case 1

Strategies and Tools for Conducting Previous Consultations:**The U'wa Case (Ecopetrol, Colombia)**

When Ecopetrol, in 2004, created the project for the exploration of the Siriri– Catleya blocks in the Sarare region, northern Colombia, the company had to face the previous conflictive situation between the U'wa indigenous people and the hydrocarbon activity developed in a bordering block (Block Samoré), a confrontation which at the end of the 90's became internationally notorious³⁶ and the status of an armed conflict³⁷.

The U'wa people live in the Sarare region, spread among several departments where there are oil interests. Currently their population is 4.500 and they are basically farmers, but they also fish, hunt, and gather.

As the territory is inhabited by indigenous communities and considering that particular context, Ecopetrol took into account the recommendations made by the OAS Harvard commission³⁸. The company also started the Priors Consultation process according to international and Colombian regulations, with the conviction that such a process guarantees the fundamental right to the participation of indigenous communities and must be included when a process is developed in good faith, respecting and recognising the rights of the U'wa people, with a view to carrying out their activities without detriment to their cultural, social, and economic integrity.

Besides providing a positive ethical background for the process, the consultation strategy comprised the design of some specific tools³⁹:

- Creation of a legal route sheet, which helped to determine current legal tools, jurisprudence, and relationships with international organizations (ICHR, ILO, UN);
- Guaranteeing the fundamental right to participation: with this goal a pedagogical kit was designed for Prior Consultation, ensuring the transmission of contents that the authorities and the populations must know ("Thinking Tools Box"); participative environmental studies were made and the Citizen Participation Office was created, in order to receive demands related to the company's performance;
- Social Investment: contribution to the creation and implementation of *Plans for Life*;
- Information, communication, and media, thanks to the *Information Program Addressed to Leaders, Traditional Authorities and Communities* (informative and formative meetings and workshops), *Information Program Addressed to Government Organizations and Media*, (press conferences, radio broadcasts, publications, TV, etc.);
- Strengthening the project's institutional integration through coordination with the national government and procedures with international organizations;
- Incorporation of experts in: human rights, international and indigenous law, conflict solving, anthropology, etc.;
- Adaptation to timing and consultation methods: respect for the ritual calendar and the spatial delimitation of communal territories and adaptation and translation of contents to the U'wa language (by community members selected by its leaders).

This consultation was made in each separate block, contacting the associations which represent the U'wa politically: ASOU'WA in both blocks and ASCATIDAR in the Catleya block⁴⁰. In spite of this effort, Ecopetrol has achieved an uneven success:

ASOU'WA (Siriri and Catleya blocks). 17 U'wa communities participate in this association. Since 2004 the Colombian Ethnicity Department repeatedly invited this association to participate in the Prior Consultation process, with their continual refusal (arguing that accepting the consultation meant accepting the project⁴¹). As a reaction to this stance the State Council decided that, as it was clear that an unjustified refusal to answer to a Prior Consultation call does not affect the legal status of the

³⁶ Dr. Macdonald, Theodore; Prof. James Anaya y Lic. Yadira Soto. Observaciones y recomendaciones sobre el caso del Bloque Samoré. *Proyecto en Colombia de la organización de los Estados Americanos y la Universidad de Harvard*. Organization of American States.

³⁷ Serje, Margarita (2003). ONGs, indios y petróleo: El caso U'WA a través de los mapas del territorio en disputa. *Bulletin de l'Institut français d'études andines* N° 32 (1) Pp 101-131.

³⁸ *Ibid.* 36

³⁹ Gómez Cerón, Napoléon (2008) Consulta Previa al pueblo U'Wabloques Siriri y Catleya. Ecopetrol. Human Rights and the Oil & Gas Industry in Latin America workshop. IPIECA. Buenos Aires.

⁴⁰ *Ibid.* 39.

⁴¹ *Ibid.* 37.

project. Thus, the consultation process was exhausted and Ecopetrol was asked to design an Environment Management Plan. At the time of writing, the Plan is still being assessed by the Interior Department.

ASCATIDAR (Catleya Block). 7 U'wa communities participate in this association. Since 2004 approach meetings have taken place between the government and Ecopetrol, looking for an agreement on Consultation methodology. Then workshops were set up, as a proper stage of Prior Consultation. Although the communities finally decided to oppose the project, the Government deems it viable because the consultation process which was carried out as well as the Environment Management Plan presented by the company guarantee Indigenous rights and do not affect the ethnic and cultural integrity of the U'wa people. In addition, the Government recommends an Action Plan for the development of ASCATIDAR (including health, education, housing and cleaning up).

Considering the particular characteristics of this case, some general conclusions can be suggested. To begin with, the social component and the contact with communities must be present from the first stages of any project, especially when entering unexplored areas. Secondly, it is necessary to underline the importance of the State's participation, not only to ensure the Prior Consultation process, but also to make it more legitimate in the eyes of the community and the society in general. Finally, although the "legal license" is enough for the execution of a project, it is true that it is not a complete guarantee for its realization; a "Social License" must also be contemplated.

ANNEX IV - Prior Consultation: ILO Convention 169 and national legislation

ILO Convention 169

Article 6 of Convention 169 established that States are obliged to *"Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly."*

The "Guide for the Application of ILO Convention 169" written by the ILO itself, points out that: *"No segment of the national population of any country has the right to veto developing policies affecting the whole country (...) demands governments to carry out real consultations where Indigenous and Tribal Peoples have the right to express their point of view and influence the process of decision making."* (underlining is ours)..

The Convention also points out that governments shall *"Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them"*.

Article 7 of the Convention says that, as regards development processes, interested peoples shall have the right to decide their own priorities, in as much as development affects their lives, institutions or spiritual well-being and the lands they occupy or otherwise use and to control when possible their own economic, social, and cultural development. Moreover, these peoples shall participate in the formulation, application and evaluation of plans and program of regional and national development which might directly or indirectly affect them.

In connection to natural resources and the compulsory Prior Consultation, the Convention establishes that the rights of the peoples to use natural resources in their own lands will receive special protection. Such resources include participation in utilization, administration and conservation of natural resources.

However, Convention 169 in article 15 affirms something essential: in countries where national legislation establishes that sub-surface resources (such as hydrocarbons) belong to the State, or the State has other rights over natural resources, governments shall maintain consultation procedures to ask the point of view of concerned peoples, in order to determine how their interests might be damaged, and to what extent, before starting or authorizing any exploration or exploitation project to harness natural resources in their lands.

Article 15 of the Convention also states that *"the peoples concerned shall wherever possible participate⁴² in such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities."*

According to Article 6, States commit themselves to establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

National legislations

This section provides a short overview of the provisions on Prior Consultation in some national Latin American and Caribbean legislation.

Bolivia

Bolivian Hydrocarbon Act (3058) states that peasant and indigenous communities and peoples shall be obligatorily consulted in an appropriate form before any hydrocarbon activity is planned in their communal original lands, communal property or lands of traditional access and occupation.

It is also established that consistent with ILO Convention 169, the consultation shall be carried out in good faith, with sincerity, transparency, information and opportunity, and that it shall be made by Bolivian Government Authorities through appropriate means and according to the circumstances and characteristics of each case.

The Consultation is compulsory and the decisions resulting from it must be respected. In all cases, the Consultation shall be carried out in two stages: prior to the bid, authorization, contracting and approval of hydrocarbon measures, works or projects, and prior to the approval by Environmental Impact Assessment Surveys.

The aim of the first stage of the consultation and assessment process will be to inform organizations which could be affected and to have a point of view about general aspects of the

hydrocarbon activity, work or project; the second stage aims at producing remarks, suggestions, complementary measures and recommendations which could be agreed on and shall be taken into account as fundamental criteria during the Environmental Impact Assessment Survey.

The resolutions and agreements recorded by the Competent Authorities as resulting from this process in either of its two stages are valid to regulate hydrocarbon activities carried out as part of that project. In case the consultation leads to a negative result, the State can promote a conciliation process in the country's interest.

Brazil

The Brazilian Constitution states that the harnessing of resources in indigenous lands can only be carried out with the authorization of the National Congress, after having heard the opinion of the affected communities and making sure they get a share of the exploitation's results according to the law⁴³.

⁴² According to the Guide for the Application of ILO Convention 169, the sentence "whenever possible" from article 15 means that "governments always keep the right to decide if Indigenous and Tribal Peoples receive benefits or not from the exploitation of natural resources in their lands."

⁴³ Our own translation.

Colombia

Colombian law includes the concept of prior consultation. Law 99 (12.22. 99) created by the Environment Department establishes that the exploitation of natural resources shall be made without detriment to the cultural, social and economic integrity of traditional Indigenous and African communities and all measures on the subject will be made after consulting these citizens.

According to regulations (Decree 1320), prior consultation has as its goal to analyze the economic, environmental, social, and cultural impact that might be caused by the exploitation of natural resources in the territory of indigenous or African communities, and the measures to protect their integrity.

The person responsible for economic activities shall promote and ensure the participation of the communities during the elaboration of surveys. Once the evaluation and environmental management document is created, before it is handed to the competent authorities, a prior consultation shall be carried out; when this consultation is over, the authorities will decide whether permission will be given or denied for the exploitation or use of the renewable resources.

Ecuador

The Ecuadorean National Plan for Human Rights (Decree 1527) establishes as its general aim, that Indigenous Peoples are consulted before projects for the exploration and exploitation of natural resources in their ancestral territories and lands are authorized. With this goal, according to Law-Ranking Decree 2000-1 (08.18.2000), public hearings and assemblies will be promoted to explain and expose the planned activities and their purpose, the conditions of their development, their duration and possible environmental impact on the community or its members. After the consultation is carried out, the corresponding department will adopt the decisions it finds most in the State's interest.

In the case of hydrocarbons, article 88 of the Political Constitution declares that any decision which could affect the environment shall take into account the points of view of the community, which must be previously consulted after providing it with the due information and guaranteeing its participation.

Article 28 of the Environment Management Bill declares that any natural or legal person has the right to participate in environmental management through the different social means established for that purpose, and Article 29 establishes the right any natural or legal person has to be properly informed on any activity which might have environmental impacts.

Article 17-A of the State Modernization Act determines that State institutions can demand payment for services regarding control, inspections, authorizations, permissions, licenses or similar grants, in order to recover costs invested in those activities.

Article 20 of Book VI on Environment Quality from the Unified Text of Secondary Environment Legislation (TULAS) establishes as its aim citizenship participation in environmental management, considering and including criteria and observations made by the citizenship, particularly by people directly affected by a project, about relevant environmental variables for impact surveys and environmental management plans, as long as they are technically and economically viable, so that all activities which could have an impact are adequately developed, minimizing their impacts or compensating for them, in order to improve environmental conditions for the execution of the proposed project, along all its stages.

Executive Decree N. 1040, published in Official Register N. 332 on 8 May 2008 issues a Regulation for the Application of Social Participation Mechanisms established by the Environment Management Act, which in Article 13 states that the cost for the development of social participation mechanisms will be paid by the project's sponsor, as established by the Modernization Act. Furthermore, the Environment

Secretary issued in July 2008 a series of "Instructions on the Regulation of the Application of Social Participation Mechanisms established by the Environment Management Bill"

Honduras

In Honduras, the Property Act (Decree 82-2004), says that, in case the State plans the exploitation of natural resources in Indigenous Peoples Territories, they must be pre-informed and consulted about possible benefits and damages before any exploration or exploitation is authorized.

Nicaragua

The Indigenous Peoples Communal Property Act from the autonomous regions in the Atlantic Coast and the Bocay, Coco, Indio, and Maíz rivers (Act 445) indicates that Consultation consists in spreading and discussing technical information about the operation or project, followed by a discussion on the decision-making process.

For the granting of permissions for the rational exploitation of national resources in indigenous lands, the town council will give its opinion after consulting with the concerned indigenous community. Without detriment to this prior consultation, the Regional Council, or any other entity, shall directly consult with the communities in whose lands those resources find themselves. The communities, as a result of the consultation, shall answer positively or negatively to the Autonomous Regional Council consultation.

Once the consultation process is over, the community and the Autonomous Regional Council and the company shall sign an agreement specifying technical terms and the community's participation in the economic benefits.

Besides, the Law states that, in case the community is opposed to the execution of the project, the granting of the concessions or the exploitation contract, the Regional Council shall begin a negotiation process with the community.

This negotiation of the Regional Council shall take into account indemnity to the community for any possible damages, without detriment to its participation in the project; in no case shall the resettlement or relocation of the community be contemplated.

Peru

The General Environment Act (Act 28611) establishes that in case a project or activity can be developed in indigenous, peasant or native lands, the consultation procedures must seek an agreement with the representatives of these groups, in order to safeguard their rights and traditional customs, and to establish the corresponding benefits and compensations for the use of natural resources in their lands, according to the relevant laws.

Specifically for hydrocarbon activities, the Regulation for Citizenship Participation (Supreme Decree 012-2008-EM) establishes that the aim of consultation is to determine whether the interests of the communities living in an area where the project could have a direct influence might be affected, so that before any activities are started or authorized, information is spread and any appropriate measures to mitigate possible environmental impacts are taken, and to listen to initiatives, suggestions, worries and offers which could maximize the project's social and environmental positive impacts.

Consultation with Indigenous Peoples, as a means of citizenship participation, must be carried out in good faith and in a manner appropriate to circumstances, in order to reach the best possible agreement on the project's reach and its benefits.

On December the 5th 2008, the RM-571-MEM/DM "Guideline for Citizenship Participation in Hydrocarbon Activities" was published, aimed at providing criteria for the application of decree DS 012-2008-EM.

Venezuela

The Political Constitution of 1999 declares that exploitation of natural resources in indigenous lands, by the State or by private companies, shall be done without damaging the social, cultural, and economic integrity of indigenous peoples. Any project must be subject to prior information and consultation with the concerned indigenous communities. Indigenous participation in benefits deriving from these projects must respect the Constitution and the Law.

Moreover, The Organic Law of Indigenous Peoples and Communities says that the consultation shall be carried out in good faith, contemplate language and spirituality, respect their own organization, legitimate authorities and communication and information systems used by the concerned group's members.

Projects submitted to consultation process with indigenous peoples and communities, require a written record created by both parties in mutual agreement on the consultation process as well as on the conditions of the project's execution. If the agreement is not respected, indigenous communities shall have the right to begin the corresponding legal actions.

The execution of any activity in indigenous lands or habitats by any natural or legal person of the public or private sector without previous consent from the concerned peoples is strictly forbidden. These peoples can demand the cancellation of any contract or permission granted by the State when the project's execution violates the terms which were agreed upon with the concerned Indigenous Peoples.

Prior consultation with Indigenous Peoples before harnessing natural resources is mandatory; otherwise the concession can be cancelled. The corresponding contract shall include the conditions for the exploration, exploitation, and harnessing of resources. Should the contract's provision be violated, the contract shall be cancelled, with no right to indemnity.

CHECK LIST

PARTICIPATION AND CONSULTATION PROCESS

Positive consultation processes are based on the recognition of rights, trust and respect among all actors, and on responsible decision making, with available, transparent, well-timed and understandable information, in other words, culturally appropriate information (in form and content).

Since many countries have relevant regulations, it is important to determine whether:

- The country where the project will be developed has regulations requiring a participation and consultation process

- The State's participation in the initial stages of this process is ensured

Stage 1: Call to Public Consultation

The following points must be addressed:

Will all governmental, non-governmental and indigenous organizations in the region be called?

--

Will the call be open for all and respect local practices and traditions (including appropriate venue, time and place)?

--

Has a description of the project been sent prior to the consultation?

--

Stage 2: Presentation of the Project and the Company

Key questions:

Can the company's representatives that attend the consultation make decisions on their own?

--

Is the presentation made in the local language, in a clear and transparent way, using different media (graphs, maps, etc.)?

--

Is there a space where the public can express their worries?

--

Is a copy of the presentation given to all concerned parties, in the local language, written in a clear and transparent way?

--

Stage 3: Permanent Communication, open dialogue, fluid relations, agreements based on knowledge and information.

Building a relationship of communication flowing both ways: dialogue and information reception spaces.

To be considered:

Will a consistent relationship with all stakeholders be maintained, regardless of the local regulations?

--

Will all the relevant information be published and transmitted to all stakeholders throughout the process?

--

Will periodic meetings with different stakeholders be scheduled?

Documentation of the consultation process

The documentation of the whole consultation and participation process is part of the company's public image.

To be considered:

Are the country's regulations for the documentation process being followed, in case the country has such regulations?

Is the consultation process duly recorded from the onset?

Will all the recorded documentation be openly available for the public?

Culture based approach

The participation and consultation process must be based on the company's recognition of the particular characteristics of indigenous groups

Key points:

Are previous consultations made whenever possible?

Are the representatives adequately chosen for this dialogue?

Are there points prioritized for consultation?

Is the information transmitted in a culturally appropriate manner?

Is the information and consultation process carried out along with the State?

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3.5 STRATEGIC ALLIANCES AND INTERSECTORIAL COLABORATION

3.5.1 Tripartite Dialogue

*"Tripartite Alliances are relations and cooperation agreements between the company, public sector entities and civil society organizations, including local communities."*⁴⁴

Diverse actors are interested in **sustainable development** in general, particularly in areas where large projects of natural resources extraction are under development. This common interest, in addition to overcoming poverty- a state which characterizes the situation of indigenous peoples- is the base as well as the objective, which permits the construction of strategic alliances. However, there exist nuances and varying interests among the different actors. The achievement of different gas and petroleum projects is principally in the interest of the state and companies, and in some cases financial corporations; while other actors place their interest in the rights of indigenous peoples and environmental conservation. Despite their differences all the actors coincide in that the conservation of natural resources is a theme of common interest.

Although it initially appears as if the actors interests run counter to each other, it is possible to find that each one has an interest, to different degrees, in finding consensual solutions: fair agreements with respect to the most urgent problems (not just the derivatives of direct action of hydrocarbon projects) and plant objectives that promote sustainable development in these zones. This obliges the planning of joint action strategies and projects that require the energies and contribution of each one of the actors. Companies need to create a climate of confidence, and to respect the other actors that allow these projects to be successful (in economic, environmental and social terms).

Making these alliances is a process of social construction, it is not a lobby for a specific agreement, but rather it should be understood as an ongoing dialogue that allows consensual agreements to be reached about diverse aspects of the Project, and related to sustainable development in the area; in this work the hydrocarbon industry is one of the actors.

One of the ways these alliances are formed is through a process known today as Tripartite Alliances (State-Company-Civil Society), this is a useful instrument to reach and maintain the social license necessary to complete these projects.

In recent years, there has been a tendency for the creation of these spaces of tripartite dialogue. This has been pushed forward by the state, business, and there has also been a demand of various organized sectors of civil society. Although these experiences do show some patterns, there are no universal formulas to guarantee success; in such spaces of social interaction the actors are different and diverse and thus these alliances should be constructed on a case by case basis.

Tripartite Alliances permit:

⁴⁴ Participatory Monitoring of the Socio-Environmental Management of the Oil and Gas Industry in Latin America and the Caribbean. Informe Socio-ambiental de ARPEL N° 5. ESSA, 128, Uruguay 2007, p. 34.

- The achievement of a consensus among the interests of the different actors involved to attain the viability of the projects;
- The construction of sustainable channels for multi-stakeholder dialogue;
- The establishment of formal and informal relationships among the actors;
- The definition of roles and clear responsibilities, agreed by all the actors, avoid overlapping participant's responsibilities and roles.

The Process of Tripartite Dialogue

What is it? Why is it done?

"The focus of the project resides principally in the dialogue between the various actors, particularly with relation to rights, access, and decisions about strategic use of natural resources. The value that the actors place on the dialogue- understood as both a public arena to express doubts and a framework for mutual understanding- can be seen in specific conflicts in Latin America and also in asymmetric conflicts in general.

Dialogue, in contrast to "negotiation" which frequently carries connotations of a "loss" of some kind and always suggests some sort of end through an agreement that is seen by the weaker actors as a means to participation, expression, and public recognition of their ample civil and economic rights.

Dialogue is a means towards and an expression of inclusion for those who have traditionally been marginalized, or had their participation restricted. At the same time, dialogue provides an opportunity for representatives of industry and the government to express their necessities and doubts within a context of mutual respect."

Fierro, Carlos; Dra. Kamlage, Christina y Dr. Macdonald, Theodore. Capacitación para el Diálogo Tripartito. Manual. InWEnt, Fundación Futuro Latinoamericano, Programa PONSACS del Centro Weatherhead de Asuntos Internacionales de la Universidad Harvard, 2003, p. 9.

3.5.2 Mechanisms of Representation and Interaction

" Article 18 Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions"

"Article 35 Indigenous peoples have the right to determine the responsibilities of individuals to their communities."

United Nations Declaration on the Rights of Indigenous Peoples, 2007

Representation is a key aspect for the success of the project. In general it is recommended that attention is paid to the following aspects:

- Representatives ought to have authority and authorization from their respective organizations or institutions to establish relationships with the other parties;
- Assure that all sectors are represented at different levels from the diverse sectors.

In the case of the indigenous groups, direct representatives from the communities where the project will be developed ought to be included, as well as regional and national leaders, even if two or more organizations are represented.

- Cultural differences among the representatives: include different ways of understanding development and what should be understood by sustainable development in general, as well as other concepts and categories⁴⁵.
- Language differences: it ought to be considered whether the presence of translators during reunions is needed.

Defining a mechanism for interaction and work

The first step is to establish a formal "Dialogue Table", to do so it is necessary to jointly define:

- The previous history of the relationship with regard to the pending issue;
- The principal and secondary objectives;
- The principles that should be respected;
- The conformation, and members, and representation of the parties;
- The communication mechanisms and access to information.

The previous should be part of the CODE OF CONDUCT, which is defined as:

- Conformation of a Dialogue Table;
- Planning of meetings;
- Designation of a coordinator or facilitator (by consensus);
- Norms of communication (pay attention to language and translation);
- Mechanisms through which decisions are ratified (pay attention to the time necessary to consult with a home base, particularly IP, or Indigenous Peoples);
- Financing: The free development of activities by representatives of the indigenous groups should be guaranteed and equitable conditions created for their participation in the Dialogue Table, as well as the relationship with their home bases: communication costs, transportation, contracting of assistants, compensation for time utilized, etc;
- The mechanisms to modify the said code of conduct.

⁴⁵ For an approximation of language and conceptual differences see: Glossary of Terms Commonly Used in the Tripartite Dialogue – Governments, Indigenous Peoples and Industry – in Latin America Social-Environmental Report, ARPEL # 2-February 2004.

3.5.3 Cases Studies

Case study 1

In 1999 the company Occidental Exploration and Production Company-OEPC, signed with the Secoya Indigenous Organization of Ecuador- OISE, a Code of Conduct to initiate a Dialogue Process. OEPC had subscribed fourteen years earlier to an exploration and exploitation contract in block 15 (in the Amazonian Region) with the Ecuadorian Government. The presence of the company was marked by a continued opposition of the Secoya. Prior to the exploration phase the company decided to construct three wells that were located within the National Secoya Territory, the inhabitants of which formally owned the territory. As a way to promote a resolution process to the general conflict, both parties subscribed to a Code of Conduct, *"With the end of building good neighborly relations and mutual respect of the rights of the parties, the OISE and the OEPC believe it to be convenient to set a Code of Conduct to regulate the dialogue process"*.

The document was signed by four representatives of the Secoya people and the President and General Manager of OEPC, and also as witnesses of honor the President of the Superior Counsel of CODENPE representing the President of the Republic, the Minister of Energy and Mines, the Minister of the Environment, a professor of the Sociology and Anthropology Department of the International University of Florida, and the representative of the Program Nonviolent Sanctions and Cultural Survival Weatherhead Center for International Affairs Harvard University.

Case study 2

Tripartite Dialogue promoted by the program EAP: decision spaces for the study of common interests

The Energy, Environment and Population Program (EAP) is an initiative started in 1999 under the auspices of the Latin American Energy Organization (OLADE) and the World Bank, in "response to the goal of developing a hydrocarbon industry compatible with the basic objectives of sustainable development in the South Andean River Basin". Other participants included the coordinator for Indigenous Organizations of the Amazonian River Basin (COICA), the regional Association of Petroleum and Natural Gas Companies in Latin America and the Caribbean (ARPEL).

The principal objective of the program is to improve the relationship between the government, industry and indigenous peoples, *"with the aim of creating conditions that permit developing the petroleum industry in the Amazonian River Basin in a way that is compatible with the principles of sustainable development"*. The Tripartite Dialogue has been the instrument that has permitted the advance of the EAP Program as a space where *"terms of reference have been decided in specific studies about points of common interest."*

With the end of making possible widespread participation, various meetings of the Tripartite Dialogue took place in different cities in the region: Cartagena, Colombia 1999, 2000 y 2001; in Cusco, Peru 2002; in Iquitos, Peru 2002.

The Sixth Tripartite Reunion of the program took place in October of 2003 in the city of Quito-Ecuador with the purpose of *"continuing the tripartite dialogue and revising the work carried out in each one of the different themes touched on in the EAP: Information, Regulations, Education, Profit Distribution, Socio-Environmental Monitoring, and benefits received by the actors"*, which concludes arriving at *"the elaboration of the document, Marks of Reference for Regulation; all parties agreed on the terms of reference"* to make a Comparative Study about the Distribution of Petroleum Profits in Bolivia, Colombia, Ecuador y Peru. In this reunion, an analysis took place of *"proposals for a new focus in the EAP Program, in agreement with the criteria of all the actors involved."*

For further details consult: Comparative Study about the Distribution of Petroleum Profits in Bolivia, Colombia, Ecuador, and Peru 2005 (www.esmap.org/filez/pubs/30405SpanishFinal.pdf)

CHECK LIST

TRIPARTITE DIALOGUE

Companies need to achieve a climate of confidence and respect with the other actors in order to successfully carry out their projects. Tripartite Alliances (State-Company-Civil Society) are a useful instrument to promote dialogue among the parties and maintain social license to operate.

Representation Mechanisms

Representation of the parties in the dialogue process is key to the successful tripartite alliance.

Pay attention to the following:

- Are all sectors represented at different levels?
- Do the representatives possess authorization from their organizations to establish relations with the other parties?
- Are cultural differences (including language) among the representatives considered?

Mechanisms of Work and Interaction

The first step is the creation of a work table

To do so the following must be jointly defined:

- Principal and secondary objectives
- Principles that will be respected
- Members and representatives of each of the parties
- Communication mechanisms and access to information
- Elaboration of a Code of Conduct

Code of Conduct

Contemplate:

- What is the make-up of the Dialogue Table?
- How are meetings planned?
- The designation by consensus of a coordinator or a facilitator
- What are the norms of communication?

- What are the mechanisms to ratify decisions?
- What is the mode of financing?
- What are the mechanisms to modify the said Code of Conduct?

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3.6 PARTICIPATIVE MONITORING

- Participative Monitoring is part of a system of evaluation and monitoring that all companies ought to have jointly with the local population to ensure that agreements reached between the population and the company are being upheld and supervise that these agreements operate within

the existing national and international legal norms to guarantee high standards of quality.⁴⁶

- This is also a mechanism used to evaluate and follow all the possible impacts that these gas and oil projects could generate within a realistic socio-environmental time period. In other words, it is a search for constant measurement of the results of the process, and that the measurement takes place with the knowledge and participation of the local population in all stages of the process: design, implementation, analysis of the results, and the definition of actions to prevent undesired impacts.
- It enhances the ability to be aware of the changes in the social and environmental surroundings and in the biodiversity and quality of life of the local populations, especially indigenous communities because they are the most vulnerable to environmental changes and impacts, in order to respond early to them.
- It also permits the construction of new spaces of interaction between the company, the local communities (directly) and other social actors (government, NGO's, scientists, etc.).

The importance and usefulness of Participative Monitoring in the development of projects that involve communities or indigenous peoples, is expressed in the type of bond that it creates between the community and the company which enables the prevention of possible conflicts and contributes to the transmission of information between them.

- It is based on relations of:
 - Confidence and transparency;
 - Permanent dialogue;
 - Recognition of diverse interests;
 - Respect for indigenous culture and their perception of reality;
 - Construction of an adaptive process.

3.6.1 The process

Step 1: construct a relationship protocol.

Step 2: construct a shared vision of the objective and the problems about which control is wanted in order to take action about the problem (i.e. deterioration or loss of

determined species, occupation of part of the territory by the project's works; water quality, walking access, etc.).

⁴⁶ For more information about rules and level of countries, see: (2007- May) Participatory Monitoring of the Socio-Environmental Management of the Oil and Gas Industry in Latin America and the Caribbean. ARPEL N° 5, ESSA, 128 pp Uruguay 2007.

Step 3: determine the area to be monitored.

Step 4: remember the forms of participation (vigilance commissions, capable monitors, evaluation workshops, assemblies, etc., without being exclusive). Consider also the participation of the company (with technical assistance, financing. Directly or indirectly, etc.). Choose a commission responsible to the community.

Step 5: discuss and jointly develop the methodology and indicators that will be used.

Step 6: identify the activities that will take place.

Step 7: determine registration tools (record keeping, photographs, etc.) and establish the frequency with which they will be created and updated.

Step 8: systematize and analyze the information, determine periodically who the responsible parties are.

Step 9: publicize the results by the responsible parties.

Step 10: use the information to make decisions and define responsibilities. Consider as well the mechanisms of communication and "early alerts" so that a rapid response can be taken by the company or the pertinent authorities.

"Details and outcomes of a participatory monitoring are topics agreed upon in the course of the process and not before it though it is necessary to reach a prior consensus (Protocol) as to what and when to monitor, definition of a methodology, parameters and legal references. This is an iterative and flexible activity that includes evaluations of monitoring outputs, quality of the process itself, so that the process permanently adapts to its determining factors, thus maintaining its social validity. To keep a balance of approaches, most experiences in participatory monitoring have included parallel conventional monitoring efforts in order to compare outcomes and foster community commitment to action."
Source: Participatory Monitoring of the Socio-Environmental Management of the Oil and Gas Industry in Latin America and the Caribbean ARPEL Socio Environmental Report N° 5, ESSA, Uruguay, 2007, p. 27.

3.6.2 Methodology and instruments

The methodology ought to be coherent with an agreed upon scope (in time and space) and should consider:

- The objective and problems associated with monitoring and evaluating; it is impossible to monitor each and every aspect;
- The problems and concerns of local populations (places and areas of interest to the local population, decrease of faunal diversity or frequency, contamination of the water supply, etc.);
- Be based in international quality standards, rules, and practices that should be tested; the central results must be adequately registered and recorded;
- Reliable, precise indicators, that are also comprehensible for the local population; they can and should support in a significant way to the construction of indicators, furthermore this generates confidence among the actors involved;
- Should be constructed over a base line (can be over preexisting information, collecting existing inventories for example, or as the first work to develop) that permits a comparison between a "before" and an "after".

The wording of the instruments is fundamental when working with indigenous populations, although they could be highly interested in taking part in the monitoring, they may not understand the language used by academic investigators, hence monitoring is also a space of mutual learning. The elements of the collection of information ought to be:

- Relevant to the reason they were created;
- Clear, easy to understand for the local population;
- Based on reliable information;
- Based on available information or information that is easy to locate;
- Managed in an open and clear way, it serves the community as much as it serves the company or other stakeholders.

"Regardless the indicators that are being developed for dealing with the decisions of the company-indigenous peoples' relationships are quantitative or qualitative, they must be analyzed and evaluated continuously to ensure that their scope and importance are properly understood."

Source: Rozon, Gord. Management Indicators for Assessing the Relations between Oil Companies and Indigenous People - Edición Revisada, Guía Socio-Ambiental de Arpel N° 1, ESAA, 30 pp. Uruguay, 2003, p. 15.

3.6.3 Communication Flows and Disemination of the Monitoring's Findings

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- Often, not enough attention is placed on the creation of a sustainable and permanent system of communication between indigenous populations and the company (or the other actors). One must always remember that communication is a two-way street, it is part of the feedback and learning process needed to allow a social relationship

between participants who have cultural differences. *Participative monitoring is a space in which intercultural relations can be constructed on a permanent basis.*

- The development of Participate Monitoring must also contemplate an adequate system of documentation of all activities brought about between the company, the involved communities, and any other actor that participates in the development process. Furthermore, it must contain all agreements and promises arrived at. This documentation system must be accessible to all those involved, in order to permit a transparent and clear relationship between the community and the company.
- Define the information flow between the company and the communities involved; require mutual agreements about communication strategies (who, what, when, how).

⁴⁷ See Part 5 of the Manual

"Information and communication

- Define communication strategies.
 - i. Determine the details of the process:
 - a. What? Breadth of the Project. Legality. Study of the socio-environmental impact and the socio-environmental management plan. Socio-economic aspects of the zone. Roles and responsibilities.
 - b. How? – Methodology.
 - c. Where?
 - d. For whom? Define the receivers of the information.
 - e. When? Determine moments (and mechanisms) of consultation.
 - ii. Define the stages of the information process to the community with respect to participative monitoring.
 - iii. Diffuse and communicate elements of the protocol to explain the reasons why participative monitoring is used.
 - iv. Consider alternatives: presentations, meetings, and validation workshops.
- Define the Objective: Project feedback (not binding);
- Communication Materials: define content and preparation. Preview the translations of the documents;
- Adapt information and communication programs to the culture and language system of the population;
- Define a calendar and frequency of the meetings and the interchange of information. Translators."

Source: Moyano, Miguel. Monitoreo Participativo de la Gestión Socio-ambiental en la Industria de Petróleo y Gas en América Latina y el Caribe. Informe del Taller de ARPEL. 8 - 9 de Marzo de 2005 – Puerto La Cruz, VENEZUELA Empresa anfitriona: Repsol YPF. Informe Socio-Ambiental de ARPEL N° 4-2005 - ESSA, 19 p. Uruguay, 2005, p. 5.

CHECK LIST

PARTICIPATIVE MONITORING

Is a part of a system of evaluation and monitoring that all companies should use, in a joint way with the population, to monitor the agreement between the company and the population.

The Process

Have the following steps been followed?

Step 1: Construct a redistribution protocol

Step 2: Construct a shared vision of the objectives and the problems to be controlled

Step 3: Determine the area that will be monitored

Step 4: Agree upon the forms of participation for each part

Step 5: Construct jointly the methodology and the indicators

Step 6: Identify the activities

Step 7: Construct registering tools

Step 8: Determine the systemization and analysis of information

Step 9: Publication of the information

Step 10: Use the information to take decisions and define responsibilities.

The Methodology

Consider:

- What are the objectives and the specific problems to be monitored?
- What are the problems and preoccupations of the local populations?
- Do the standards meet international quality?
- Are the indicators detailed, trustworthy, and understandable to the local population?

- Has a Base Line been created to assure comparative study?

Compilation of instruments

The instruments:

- Are they relevant to their purpose?
- Are they clear and easy to understand for the local population?
- Are they based in reliable data?
- Are they based in available information and/or information that is easy to compile?
- Are they managed in an open and clear way?

Communication Flows and Dissemination of the Findings

Participative Monitoring:

- Has an adequate documentation system been developed?
- Is the documentation system accessible to all involved?
- Is the flow of communication based on a communication strategy?

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3.7 BIODIVERSITY.
BASELINE AND
MONITORING

Gas and oil projects in many cases are found in areas of great biodiversity, including zones considered to be Hot-Spots (areas critical to biodiversity), meaning that they are found close to conservation areas and in some cases in critical buffer zones. These areas are of direct interest to indigenous populations, and therefore programs that monitor biodiversity are a key part of socially responsible

policies and sustainable development.

Designing a program that monitors biodiversity is a scientific work and the active participation of the indigenous population should be considered from the start, not only because they provide valuable ancestral knowledge, but also because they should be active participants in the monitoring of the policies and conservation programs with respect to the quality of life of their population, which is closely related to the quality of the environment.

3.7.1 Design,
implementation,
monitoring and
evaluation of
conservation
activities

Design: a preliminary study (Scoping) should be started and should:

- Take into account the area of influence of the project;
- And the level of knowledge about the biodiversity of the area up to the present date;
- Determine the principal components that will be included in the monitoring (i.e. landscape, water life, wildlife, natural resources used by indigenous

communities);

- Design a general Methodology, as well as a methodology for each one of the components. Consider the seasons in which the information is collected (wet-dry, dormant-growth);
- Involve participation and education of the indigenous populations of the area of the different stages of the Monitoring Program.

The Monitoring of Biodiversity and the state of Conservation, usually have three forms:

- **Biological Monitoring:** done by external agents, made up by scientific teams of different disciplines, who do field work jointly with local experts in biodiversity (some give preference to the participation of village elders or village specialists, for example an expert hunter).
- **Monitor the Use of Natural Resources:** By external agents with a high level of participation by the local indigenous community, making multidisciplinary and intercultural teams.
- **Community Environmental Monitoring:** By the same community monitors with external technical help. (NGOs, academic investigators, etc.).

3.7.2 Community Environmental Monitoring

Focus on participation for local indigenous populations

A participative approach includes interdisciplinary investigation teams (natural sciences and social sciences) and interethnic (scientists and technicians with a Western education and indigenous experts). The objective is the development of the indigenous community's capacities (or persons designated by these communities) to specialize in the management of these monitoring systems. This capacitates them to make decisions and manage a process that permits effective monitoring of the possible socio-environmental impacts in their territories, and thus permits greater clarity about the causes and the changes that can happen.

Characteristics of the Indigenous Participants:

- Recognized experts selected by their respective communities;
- Community Monitors, chosen by their community, are part of the interdisciplinary and intercultural team; special attention should be paid to the incorporation of women;
- Families and domestic units that voluntarily want to participate in the process of Monitoring the Use of natural resources.

The base line and collection of information should be based in:

- Direct Dialogue with the entire population and with those families and persons that voluntarily want to participate in the process; the methodology and some instruments of the Participative Rural Evaluation (PRE) will be made available to facilitate widespread participation;
- Participative field work in which the parties walk through the forest registering and specifying species with the objective that they be identified by members of the interdisciplinary and intercultural investigation team.

The **methodological focus** ought to contemplate the elaboration of a set of reliable variables and sensitive indicators, such as the proposal of a set of instruments that are easily applied, thus creating propitious and viable circumstances for participation, as well as permitting the measuring of changes in the biodiversity and the quality of life of the indigenous populations. In this way, together with the other instruments used by the team of natural scientists, the population is a part of the mechanisms of early alert and prevention.

The use of techniques that allow effective participation by the local population is important, including qualitative and quantitative methods, for example:

- Workshops of Rural Participation Evaluation (WRPE), or Rapid Ecological Evaluations (REE);
- Use note cards to register the use of natural resources;
- Photographic Registration.

Depending on the variables and indicators, the use of qualitative instruments (WRPE) is recommended:

- a) For spatial data:
 - Maps of resources use, access, and control

b) For time data

- Chronology: history of the natural, cultural, and social events that have affected the community;
- Seasons calendar: to obtain data on climate changes, for example, in times of dormancy, growth, dry, and wet seasons, etc.
- Cultural Calendar: chronology of the principal social, economic and cultural activities.

c) For social data:

- Population by age and sex
- VENN Diagrams by groups of interest and power

Finally, the WRPE allows the availability of instruments to identify and discuss problems and opportunities, such as the prioritization of options and establishment of collective consensual agreements.

It is also possible to work with the direct participation of the indigenous family's data instruments for the registering of quantitative data:

- Documents of the Register of Consumption of Natural Resources by the part of the Members of the Homes or Domestic Units (MHDU). These documents ought to be especially constructed to be easy to comprehend and to help register information such as the construction of a Data Base.

When the evaluation and monitoring is taking place through various approximations (PMB, Monitoring of Use, and/or Community Monitoring) the collected and systemized information will later be correlated with the results of the Biological Monitoring to establish the sustainability and the level of risk (or not) for the biodiversity; or rather, try to respond to two central questions:

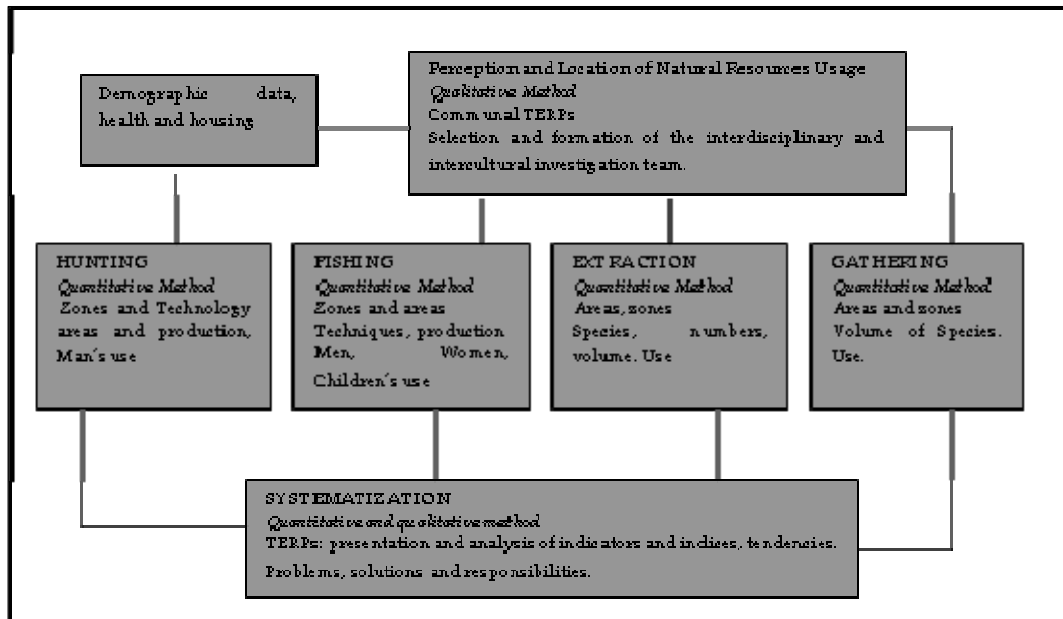
- What is the pressure that is placed over each species in a determined moment in time?;
- What are the reproductive indices of those species over which pressure is exercised?

Furthermore, it would be possible to note the potential causes of the misbalance between pressure on natural resources and the reproduction of the species, correlating it to the condition of nutrition of the indigenous populations; thus creating mechanisms of early alert and specifying the need to extend the most timely or specific investigations.

The following diagram shows the methodological focus of the component of the Monitoring of Natural Resource Use by Communities (PMB-Camisea)⁴⁸:

⁴⁸ The development of the implementation can be seen in PMB-Camisea, www.camisea.com

FIGURE 11 – METHODOLOGICAL FOCUS OF THE COMPONENT OF THE MONITORING OF NATURAL RESOURCE USE BY COMMUNITIES



Source: Sillero, C. Rodríguez Achung, M et al MONITOREO DE LA BIODIVERSIDAD EN CAMISEA Capítulo N° 9 Metodologías para el Monitoreo del Uso de los Recursos Naturales por las Comunidades. PPC-ERM, October 2002.

Various conservation organizations have brought about processes of evaluation and participative monitoring in conservation areas in different countries and especially with indigenous populations; upon realizing that conservation without the local population is not possible, and that indigenous communities can and want to participate in these processes, always and when the conservation is not an impediment to them continuing to sustainably use the resources in these territories. The International union for Conservation of Nature (IUCN) has collected a set of lessons from their participative monitoring process and the co-management model⁴⁹:

- “1. When the indigenous peoples participate in the management of the process from the beginning of the planning process, there have been benefits for both the indigenous people and the management authorities;
2. When the participation of the indigenous people is greater in all aspects of management, there is less possibility that conflicts will arise;
3. In those areas in which there already exists some type of co-management, the challenge consists in reinforcing and extending that mechanism. Where the indigenous people are still not participating, the challenge is to make that happen (...)

The principal conclusions are the following:

In effect, the indigenous and traditional peoples are actively interacting with protected areas throughout the whole world. The case studies here presented describe only one small instance of those interactions.

⁴⁹ Source: Beltrán, Javier (Ed.) (2001) *Indigenous and Traditional Peoples and Protected Areas. Principles, Guidelines and Case Studies*. World Commission on Protected Areas (WCPA), Best Practice Protected Area Guidelines Series No. 4. IUCN– The World Conservation Union, p. 11.

The majority of these protected areas here described have been established without the express consent of the people who previously inhabited these lands or seas of the region. As a result, the authorities of the protected area have been making decisions about the species and ecosystems included in these areas, without the plentiful participation of key interest groups.

Fortunately, this situation is changing. In part, this is due to the fact that there has arisen a greater general acceptance of indigenous peoples' rights, and also that, now, it is recognized that ample participation of the indigenous populations is essential to assuring the long term sustainability of protected areas in which they live or concentrate their interests.

Sometimes, however, the actual participation of traditional and indigenous people in the planning process and the decision making is far from what would be ideal. One way to develop co-management in protected areas, when this process has taken root slowly, can be through informal consultations and discussions between government agencies and indigenous peoples, perhaps facilitated by international organizations"

3.7.3 Integration with
Company
Management System

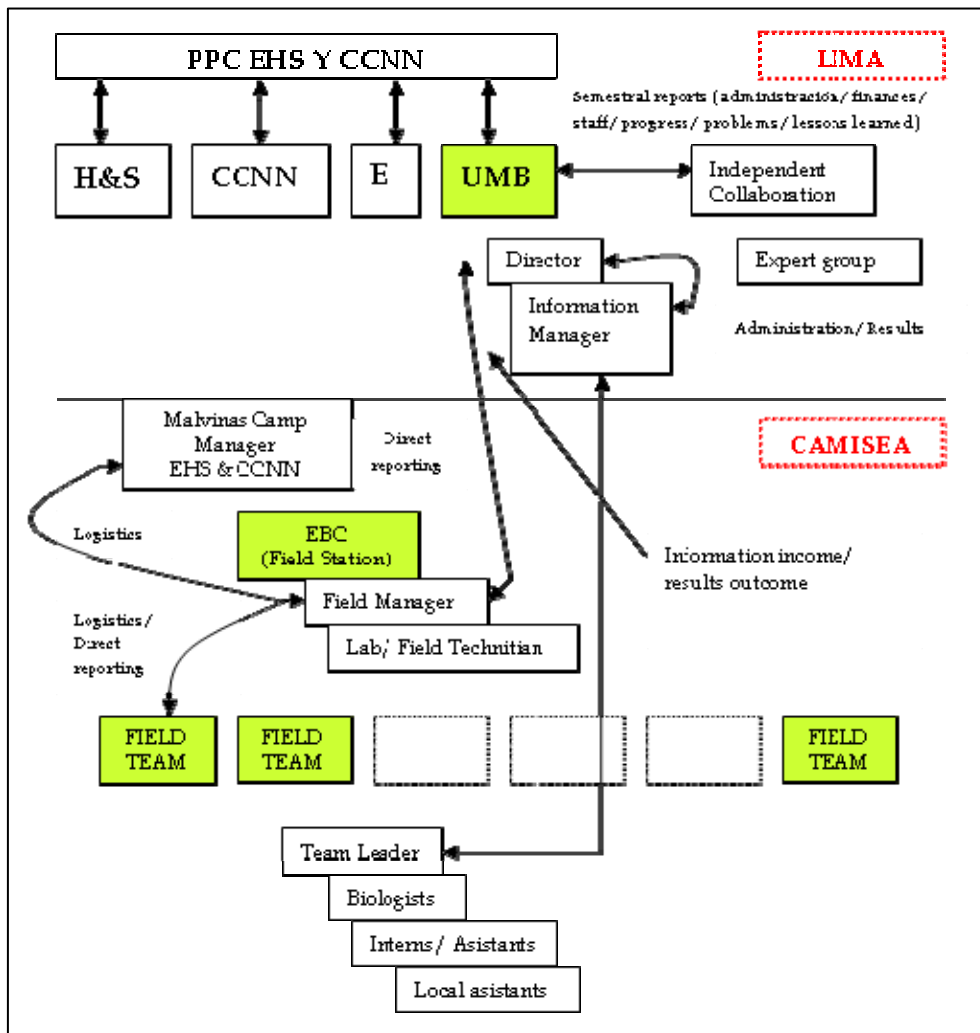
"Determining meaningful and effective performance indicators of the management of biodiversity impacts and the relationships with communities still remains a challenge. It is important to establish a set of criteria for selecting appropriate indicators to evaluate a company's performance. Continual monitoring with a clear feedback loop for improvement is necessary in order to fully understand and clearly communicate the results to stakeholders. High quality baseline data and taking an "ecosystem approach" to conservation are important in this process. Baselines to develop environmental and social impact assessments should take into account land use, habitat distribution and not simply provide an analysis of flora and fauna."

Source: Gestión de la Biodiversidad en Relación con las Actividades de Petróleo y Gas en América Latina. Informe del Taller ARPEL – IPIECA – OGP. Quito, Ecuador. Socio-Environmental Report, ARPEL N° 3, 2005, P.8

"Some case studies provide examples and information that can be utilized to develop and strengthen alliances to manage protected areas."

One of the central objectives of the Monitoring of Biodiversity programs is the consolidation of procedures that allow the company to respond quickly when it faces problems detected in the environment. For example, a first approach proposed by the Camisea Biodiversity Monitoring Program goes as follows: (fig. 12)

FIGURE 12 – STRUCTURE OF THE GESTATION OF THE PMB



Source: Sillero C. et al. MONITOREO DE LA BIODIVERSIDAD EN CAMISEA Capítulo N° 10 Implementación y Manejo del Programa de Monitoreo de Biodiversidad PPC-ERM. 2002.

3.7.4 Cases Studies

Case 1: Pluspetrol, Camisea and the Community Environmental Monitoring Program

The Community Environmental Monitoring Program (CEMP) implemented by Pluspetrol during the construction of the upstream component of the Camisea Gas Project in Peru, illustrates what the participatory monitoring of a hydrocarbon project involves. The main objective of CEMP is to involve male and female representatives from indigenous and settlers populations, living in the direct area of influence of the Camisea project, upstream stage, in the activities to monitor potential social and environmental impact resulting from the execution of different components (3D Seismic, Drilling, Pipes, Gas Plant) of this project.

Implementation of the CEMP contemplates two main lines of action:

1. Monthly visits by community monitors to different facilities used by the project during its

construction stage, in order to learn about policies and strategies of field work implemented by Pluspetrol and its contractors to minimize such impact.

2. Monitoring potential environmental and social impact resulting from different Camisea project components in the territories of the seven native communities and one settlement located in the direct area of influence of the project.

Accordingly, the two specific objectives of CEMP are thus accomplished:

1. To spread accurate information to the local population on the monitoring and environmental/safety oversight activities by Pluspetrol, through monthly follow-up activities conducted by community monitors.
2. To receive local population concerns on potential impact in their territories in a well-organized manner, resulting from observations made by the community monitors themselves.

CEMP considered three main working stages:

Stage one. Following a call launched by Pluspetrol to a set of 8 (eight) national NGOs, an association of 2 (two) NGOs was selected (Pro Naturaleza and RAP-Red Ambiental Peruana), who designed the monitoring program on a participatory model that directly involved the boards of directors of the seven native communities and the settlement located in the area of influence. In addition, with the participation of two indigenous federations, they appointed a Coordination Committee to supervise the work of community monitors periodically.

Stage two. Selection of environmental monitors, two per native community, who receive training in issues relative to: environmental monitoring techniques and concepts, safety standards, hydrocarbon legislation and native communities' legislation.

Stage three. Implementation of participatory environmental monitoring in two field activities for every month of work,. This involved:

- i. One visit to different project facilities, during which the 16 environmental monitors broke out into 3 or 4 working groups to cover the different project facilities.
- ii. A general meeting for coordination of and training on monitoring-related aspects.

Therefore, a field activity was carried out once a fortnight. Following this trend, in almost two years more than 20 monitoring, oversight and training meetings have been held with this working group. This has allowed for a fluid exchange of information between Pluspetrol and the local populations. CEMP is currently completing its second year of field work and it coincides with the termination of the construction stage of the Camisea project. For this reason a dialogue is beginning with native communities and indigenous federations involved in this experience so as to define jointly a new working model that allows for an adjustment of the indigenous environmental monitoring for the new operational stage of the Camisea project.

CEMP has allowed Pluspetrol, the company exploiting the upstream stage of the Camisea project, to rapidly learn about potential infractions by contractors and sub-contractors to social and environmental policies, designed for the best control of impact resulting from the execution of the different project components. This, in turn, has allowed the implementation of quick corrective measures as well as the dissemination of information and training among local populations. Apart from being a very united and highly-motivated team handling basic information on topics relative to oversight and environmental and social monitoring, they have sufficient information to play the role of adequate interlocutors spreading their environmental and social concerns, and this in the long-run contributes to improvement of the dialogue and discussions that Pluspetrol maintains with local populations and those that represent them.

Source: (2007) ***Participatory Monitoring of the Socio-Environmental Management of the Oil and Gas Industry in Latin America and the Caribbean.*** Informe Socio-ambiental de ARPEL N° 5-2007 - ESSA, 128 pág. Uruguay. Pp. 35-36

Source: Contribución de Pluspetrol Perú Corporation. For more details: <http://www.camisea.com.pe/esp/reports/Eneromarzo06/Anexo%2018.pdf>

CHECK LIST

BIODIVERSITY: BASE LINE AND MONITORING

The programs that monitor biodiversity ought to consider from their initiation the active participation of indigenous peoples because they contribute to ancestral knowledge and because their quality of life is intimately related with the quality of the environment.

Design of Conservation Activities

The preliminary study shows:

What is the area of influence of the project?

What is the level of knowledge about the biodiversity of the area?

What are the principal components that will be included in the monitoring (i.e. Landscape, water life, wildlife, and natural resource use, etc)?

What is the general and specific methodology for each one of the defined components (see below)?

What are the criteria for the participative approach of indigenous peoples?

How will the community-selected representatives' capacity to specialize in the monitoring system be developed?

Methodological Approach

Contemplate:

How does one develop relevant variables and sensitive indicators to monitor biodiversity?

What are the best instruments to make visible the participation and measure the changes in the quality of life of indigenous populations?

Effective Participation Instruments

How are they applied?:

- Rural Participation Evaluation Workshops (RPEs)
- Registry of use (or consumption) of natural resources
- Photographic Registry

Integration with Management Systems

Biodiversity Monitoring is:

Integrated with other procedures of the company which allow rapid responses to detected problems.

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3.8 PLANNING AND IMPLEMENTATION OF INITIATIVES

*“Social investments that embrace a range of communal development activities were started by oil and gas corporations to maximize economic, social, and environmental benefits of their operations. These investments usually help to compensate for the negative impacts, but also can highlight positive aspects- social, economic, and environmental- of the activities of oil and gas. They are also the way through which oil and gas corporations enlarge their contributions to the community and societies where they operate and this contributes to the satisfaction of some of the local expectations. From a corporate perspective, social investments are an important component for the achievement of a “license to operate” and can also improve reputation”.*⁵⁰

3.8.1 Social investment vs. Philanthropy

Until a few decades ago, the prevailing model of community relations among the extractive sectors, was one of philanthropy marked by assistance, understood as a punctual act and one of good will on behalf of the companies to the local communities. However, this model has proven insufficient and often its practice has given way to a series of distortions and undesired negative impacts in the relationship between the companies and the local populations. It drove to the atomization of “social help”, and did not achieve a far reaching process to improve the life and well being of the local population, giving as a result in the majority of cases a growing dissatisfaction in the society and population, and contributing in many places to the destruction of existing indigenous groups and communities.

From the 1990s, it began a process of changing relations between the company and the community, due to the policy of Corporate Social Responsibility that has been constructing more sustainable, efficient, and effective relationships through what some are calling a new philanthropy: social investment. In the case of the relationship with indigenous people, it is important to take into account that they have been turning themselves into social actors, with their own forms of organization, and leadership advocating for them to be considered as persons with universal rights but also fighting for recognition of their specific cultural rights.

The social investment should aim to improve the well being of the people and the indigenous villages, increase their quality of life, and promote the development of their capabilities. This investment could be oriented towards the development of⁵¹:

- *Social Capital*: build capacity in the community, NGOs and government, especially in the decision making process, local and regional planning;
- *Human Capital*: improve access to quality health and educational services, supporting culturally appropriate forms;
- *Environmental Capital*: support environmental protection programs, use traditional knowledge of biodiversity, etc;

⁵⁰ World Bank, Mejores Prácticas para hacer frente a los Impactos Sociales de las Operaciones de Petróleo y Gas. Inversión Social del Sector Privado. (Better Practices for Facing the Social Impact of Hydrocarbon Operations. Social Investment from the Private Sector. At: <http://www.worldbank.org/ogsimpact/pssioverviewsp.htm#top> reviewed on August the 8th 2008.

⁵¹ Source: www.worldbank.org/ogsimpact/pssioverviewsp.htm#op Reviewed on June the 8th 2008.

- *Productive Capital*: improvements in local and regional infrastructure (particularly those oriented towards health, education, and local production).

3.8.2 Social Investment and good practices

"Inclusion of indigenous peoples and their organizations in project and programming cycles

60. For projects involving indigenous peoples and any project that may affect indigenous peoples, consultation should include representatives from local and regional IPOs, ensure gender and generational balance (elders and youth), and use culturally appropriate methods that allow indigenous peoples to express their views and preferences. Consideration to indigenous peoples' concepts of time is recommended, in addition to the utilization of indigenous expertise in policy, research, and training to the extent possible. It is suggested that indigenous peoples and their organizations, UNDP and other stakeholders establish in partnership the methodology of the implementation of the project. Indigenous peoples' development perspectives should also be respected and integrated in project planning."

UNDP and Indigenous Peoples: A Policy of Engagement. 14 p. http://www.lac-workspace.undp.org.co/fileadmin/Derechos_Humanos/Marcos_Conceptuales/PNUD_y_Pueblos_Indigenas_ENG.pdf

The situation of indigenous peoples is diverse; companies could face cases in which: legal recognition is weak or inconclusive, weakness of indigenous organizations, in the majority of the cases communities that severely lack physical capital or infrastructure, situations of abandonment and poverty, etc., and a reduced Human Development Index.

Three main objectives should be posed:

- Intensify the positive impacts and mitigate the adverse effects that could be generated with the implementation of oil and gas projects;
- Contribute to the sustainable development (environmental and social) of the area;
- Encourage the participation of indigenous peoples throughout the entire decision making process about any social investment to be done, and integrating their perspectives and concepts about development.

The companies ought to consider in their social investment policies:

- Consultation and participation;
- Strengthening the recognition of indigenous peoples' rights (as citizens –registered persons in the national identity system-; as well as collective communities and authorities, which permits them to have legally recognized authorities, for example);
- Strengthen the capacity of the indigenous organizations;
- The perception that indigenous peoples have about community development, and/or their ongoing and future projects that could be supported.

3.8.3 The Participative Construction of Local Community Development Projects

• *Cycles and Phases*

"The most recent World Bank projects were linked to the promotion of sustainable development, incorporating indigenous peoples' knowledge of natural resource management and environmental conservation."⁵²

Companies operating in areas where the presence of the state is often weak, have demands made upon them to fulfill deficiencies and investment needs that don't relate to them directly; therefore it can serve as an opportunity to summon other organizations (either the State as well as civil or financial organizations) in favor of local development. This permits: increased sustainability of communal development programs, reduces the dependence of indigenous peoples on companies, and achieves greater sustainability of the projects and programs.

The participation of Oil and Gas companies in social investment initiatives is closely related to the project cycle.⁵³

3.8.4 Mechanisms to Develop Different Social Investments

⁵⁴

Companies can utilize various formulas to execute the social investment that they are ready to make; although there exist different modalities, depending on the cycle of the project, the socio-environmental characteristics of the area, the degree of acceptance, and the achievement of communication and the degree of participation of the indigenous peoples, one fact is clear: 'the commitment of the company to the process, even considering its support for the process for a time period greater than its departure from the area (i.e. When the exploration or seismic phase ends it might be necessary that a capable, responsible, community relations team remains in the area and the company supports an agreed upon project for an additional time period).

- *Directly*: the company works directly with the community. Generally through direct financial help and also through the provision of products and services (low sustainability).
- *Through direct contributions to NGOs*: a company can finance (sometimes contract) a NGO to develop their community relations programs or some specialized projects (medium-low sustainability).
- *Working in association*: the company works with non-governmental and governmental communal associations to give service to the community. Requires a large involvement in the community and mechanisms of fiscal and administrative transparency (medium-high sustainability).
- *Through a Foundation*: this way is considered to be highly sustainable. Its objective can embrace projects that go farther than the local area. The principal actors have representation

⁵² Plant, Roger y Hvalkof, Soren (2002) Land Titling and Indigenous Peoples. IADB – Inter-American Development Bank, 78 p. Washington D.C, p. 63.

⁵³ World Bank Private. Private Sector Social Investment <http://www.worldbank.org/ogsimpart/pssioverviewsp.htm#top> (Reviewed on August the 8th 2008).

⁵⁴ Based in: World Bank Private Sector Social Investment <http://www.worldbank.org/ogsimpart/pssioverviewsp.htm#top> (Reviewed on August the 8th 2008).

in the Foundation (Community, NGOs, State, and Company). They tend to auto finance themselves after a period of consolidation; they can be subject to greater transparency, supervision and monitoring.

The oil and gas companies can have different roles that they assume in their social investment programs:

- As Provider:
 - Donations/short term projects;
 - Collaborations in infrastructure.
- As Facilitator:
 - Processes and consulting plans;
 - Regional Studies that respond to locally defined necessities of positive impact to improve the quality of life of the indigenous population (health, biodiversity);
 - Development of capabilities (for the different segments of the communities: leaders, women, youth);
 - Training programs (to achieve the development of human capital);
 - Support the continuity of existing programs;
 - Identifying partners (NGOs, government applications, financial entities, etc.);
 - Encourage the creation of networks and associations (social capital).
- As Partner:
 - Long term regional development programs;
 - Helping communities to build their capacity so that they can take control of their own projects and sustainable development;
 - Health, employment, education, environment;
 - In projects and programs with a limited role, where the responsibility falls on other organizations (NGOs, communities, and/or local governments).

CHECK LIST

IMPLEMENTATION AND PLANNING INITIATIVES

Social investments must include a range of activities of communal development started by companies to maximize environmental, social and economic benefits of their operations. These ought to aim at increasing the well-being of the indigenous peoples, elevating their quality of life and making possible the development of their capabilities.

Orientation of the Social Investment

Social investment projects are oriented towards the development of:

Social capital		Environmental Capital	
Human Capital		Productive Capital	

Objectives of Social Investment

Among the objectives of a social investment project are:

Does it foster positive impacts and mitigate adverse effects that could be generated by the operation?	
Does it contribute to sustainable environmental and social development of the area?	
Does it encourage the participation of indigenous peoples in the social investment projects?	

Social Investment Projects

Do the policies of the company contemplate:

Consultation and public participation?	
The strengthening of the recognition of indigenous rights?	
The strengthening of the capabilities of indigenous organizations?	
The company perception of the concept of communal development as well as social investment projects which could be supported?	

Mechanisms to Develop Social Investments

Are some of the following formulas utilized to execute social investments?:

- Directly: The company works directly with the community
- Contributions to NGOs: the company finances an NGO to develop projects

- Association: the company partners with an NGO or local associations to develop jointly a project

- Foundation: the company develops projects through a foundation

Company Role

The company assumes some of the following possible roles:

- As a provider?
- As a facilitator?
- As a partner?

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4.0 SOCIAL RISKS AND REPUTATIONAL MANAGEMENT

4.1 SOCIAL RISKS AND REPUTATIONAL MANAGEMENT

The notion of risk⁵⁵ refers to uncertainty and the inability to predict events affecting different levels and dimensions of people's lives or the environment (social-environmental risks), or affecting the reputation of businesses and investors (reputational risks). The reputation of a business can be understood as the image it projects and the perception that different social, economic, and political

sectors have of it, particular interest groups concerned with the project or projects it develops. Reputational risks are related to a negative or adverse image, and are difficult to manage; image deterioration can be due to unfulfilled expectations or commitments, or to opposing ideological and political stances.

These risks can be associated with environmental, social, political or economic factors; in most cases they originate in one of these dimensions and are often due to impacts of the company's operations, which provoke a sequence of events starting with social and environmental impacts, continuing with socio-environmental risks and arriving at the point of endangering the company's reputation (the operator as well as his partners, finance institutions and the State).

It is necessary for the industry to be aware of the risks created by the execution of projects. It is essential, not only when designing policies and prevention actions, but also when critical situations arise and mitigation measures are required. In such cases, it is necessary to also focus on prevention of further impacts, not only to mitigate existing impacts.

Nowadays, oil and gas companies operate in a context with the following characteristics:

- Distrust and negative perception of oil and gas companies by stakeholders and local groups, particularly by indigenous peoples and communities;
- Demands of transparency, stronger business ethics and commitment towards the well-being of local populations;
- High sensitivity of the public opinion regarding the industry's performance and its impacts on concerned groups, which have sometimes affected and even worsened the situation in which indigenous peoples live (poverty, marginality, environment deterioration, etc.);
- A more active presence and voice of indigenous peoples, who have become relevant, globally recognized and active social actors demanding respect for their rights;
- An increasingly globalized public opinion: the local and the global are now closely interrelated. The image of the company is created locally but perceived globally, and vice versa.

⁵⁵ Interamerican Development Bank. Unidad Ambiental y Social-departamento del Sector Privado: Riesgos de Reputación asociados a aspectos ambientales y sociales en el desarrollo de Proyectos Grandes del Sector Privado. December 2006

The risks for the companies' reputation are closely related to the impact their activities could cause on indigenous peoples' lives when operating in their territories, nearby areas, or distant areas with an impact on their territories (e.g. the lower area of a basin or microbasin).

Therefore, risk identification and management must consider the reputation of hydrocarbon companies, in connection to the consequences of their activities regarding the well-being of local populations and indigenous peoples in particular, and in relation to the standards of their Corporate Social Responsibility (CSR).

4.1.1 Risk Analysis: Dimensions and factors

Social Context: A socio-cultural and political characterization of the project area should be made. This implies placing the project in the social and political context where it will be executed, in a local as well as regional, national, and global level.

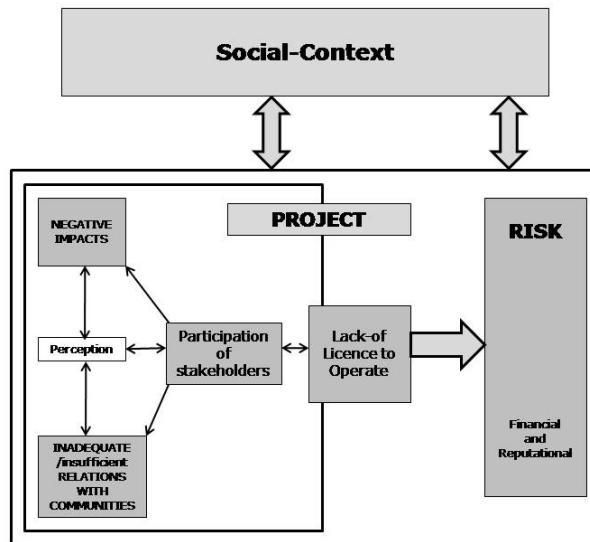
Aspects such as the following should be considered:

- a) **Governability**⁵⁶, including:
 - Political regime (representative democracy, federal states, etc.);
 - Recognition of indigenous rights: has the state signed international agreements?
 - Existence of conflicts, latent or open manifestations concerning the recognition of indigenous rights, claims for land recognition, legislations against their rights, cases of human rights violations)
 - Mechanisms of dialogue opened by the government, etc. Does the State have policies and institutions to safeguard indigenous rights?
 - Political stability guaranteeing that decisions concerning indigenous peoples have some degree of continuity.
- b) **Socio-cultural Conditions:**
 - Local demography, demographic structure of indigenous peoples (number, distribution by sex, age, etc.)
 - Existence of an education system, real number of people having access to it (is it bilingual?);
 - Health care and health state of indigenous communities⁵⁷; existence of uncontacted or isolated peoples, protection systems for such cases.
 - Political and social recognition of cultural diversity;
 - Existence and regional and national organization levels of indigenous communities (What are the levels of indigenous organizations? Are there conflicts over leadership?) Are there other groups in the area that affect indigenous rights?
- c) **Security:** State and government prevention and management systems in case of conflicts. Level of violence in the country and the region (How does the state intervene? Does military presence have more weight than dialogue? In Andean countries drug-trafficking should be taken into account as a risk variable

⁵⁶ See section 4.3 for an analysis of socio-environmental conflicts

⁵⁷ For characterization of indigenous peoples see section 3.2 y section 4.2

FIGURE 13 - ELEMENTS ASSOCIATED WITH RISK



Source: Engineers Against Poverty “Social Risk & Opportunities Toolkit”. Draft, 2006

TABLE 3 - ENVIRONMENTAL AND SOCIAL IMPACTS AFFECTING RISK

<p>Environmental</p> <ul style="list-style-type: none"> - Contamination, mainly water, soil, and sound pollution. - Impact on biodiversity - Generation of dangerous substances and waste - Soil erosion 	<p>Social</p> <ul style="list-style-type: none"> - Relocation of communities and houses. - Immigration. - Hiring of local labor force, wages, working conditions. - Human rights violations. - Disruption of daily life. - Impact on hunting, fishing and gathering areas. - Disruption of rivers and streams. - Undesired presence around the community. - Asymmetry between power and information. - Apparition of new diseases in indigenous populations. - Alteration in diet and risk in food security.
<p>Cultural</p> <ul style="list-style-type: none"> - Loss of identity - Contact with isolated or uncontacted groups - Impact on archeological sites of cultural interest 	<p>Safety</p> <ul style="list-style-type: none"> - Risk of explosions, spills, and accidents - Use of dangerous substances - Use of heavy equipment - Transportation accidents in indigenous territory - Accidents during fluvial transportation in areas of local navigation

Source: based on IADB: “Reputational risks associated to environmental and social aspects during the development of great corporate projects”. 2006 <http://www.iadb.org/pri/>

TABLE 4 - ASPECTS AFFECTING REPUTATIONAL RISKS

<p>Social and environmental risks of the Project</p> <ul style="list-style-type: none"> - Poor identification of negative and positive impacts of a project - Lack of planning and communication with the local population - Insufficient attention to indigenous perceptions regarding the project. - Poor delimitation of the project's influence areas and the zones considered valuable by the local communities (hunting, fishing, fruit gathering, cultural value areas). - Inadequate measures (technical as well as cultural) for preventing and mitigating negative impacts - Lack of staff adequately trained on relationships with communities in multicultural environments. 	<p>Political and ideological aspects</p> <ul style="list-style-type: none"> - Political circumstances, conflicts over local power, changes in authorities or local governments. - Differences among indigenous organizations, such as mutual accusations of "favoring oil companies" - Positions in disagreement with the official model of development imposed by the state, perhaps opposing the presence of hydrocarbon companies in indigenous territories. - Opposition due to the possible (but not yet proved) existence of isolated or uncontacted populations. - Companies having no clear policy concerning sustainable development and the respect of indigenous rights. - The company is part of, or associated with, groups that have not respected indigenous rights, and the company has not publicly apologized nor announced the safeguard measures it will adopt.
<p>Unreal Expectations</p> <p>* It is important to avoid conveying the belief that "The project will solve all social and environmental problems previously caused by other agents in a certain area or by the lack of social policies by the government or the States. Quite often the company is seen as the entity that will replace this absent State."</p>	
<p>Globalization of communications</p> <p>"Transmission of incomplete messages or magnification of negative messages", which spread internationally and fast, without the companies having a chance to give a clarifying answer at the same speed.</p>	

Source: adapted from IADB "Reputational risks associated to environmental and social aspects during the development of great corporate projects". 2006 <http://www.iadb.org/pri/>

4.1.2 Analysis of interest groups

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The aim of this analysis is to examine the perception that different interest groups and social actors have of the project's objectives, characteristics, and its convenience. Risk analysis allows companies to identify the existence of a conflict among groups and how influential they can be on a project's execution. It also means an opportunity to interact with these actors and communicate in a clearer and more transparent way the objectives, considerations and measures that have been anticipated to avoid/mitigate possible negative impacts; also to incorporate in an early stage changes associated to the actors' worries (mainly in connection with indigenous rights) in order to avoid damaging consequences.

⁵⁸ For an analysis of stakeholders see section 3.1

Identification of interest groups and social actors⁵⁹

It is important to consider local interest groups that are physically present (since these are territories with indigenous presence, or where there are interests opposed to hydrocarbon activities, such as forest exploiting groups or drug-trafficking groups); those who are physically absent but have strong interests in the area (conservation and environmental protection) or the population (pro-indigenous organizations). Therefore it is necessary to identify:

- Primary actors;
- Secondary actors.

Although different methods exist for the identification of interest groups (checklist, people with knowledge, mapping, etc.), these are not incompatible, but highly complementary.

In the case of indigenous peoples, it is also important to use instruments allowing for a spatial analysis in order to have an overview and understanding of the ties among interests, problems and opportunities related to the issue of territory. Also, because in the case of oil or gas concessions, the area is often wide and sometimes comprises several river basins, populated by different social groups or indigenous peoples of different ethnic groups and organization. This is particularly relevant in the case of seismic exploration, which tends to use a great area of territory albeit its duration is short.

4.1.3 Useful Tools for analysis

Stakeholders Chart: allows companies to list, identify and categorize possible interest groups. It can be started through bibliographic research, browsing books and documents, in order to have a preliminary idea of the most important socio-environmental processes that have occurred in the area, as well as the identification of social actors,

stakeholders, interests, motivations, demands, attitudes, conflict areas, etc.

Chronology of events: allows companies to learn about the local context (politics, society, populations, investments, etc.) and the current agenda of interest groups by following relevant local news in the media (papers, magazines, radio, etc.).

Map of the actors and action space: allows companies to locate geographical areas and spaces where the actors are present, where they have interests, where those interests overlap and also to locate the most vulnerable and sensitive areas, in socio-environmental terms.

Specifically, the spatial identification of the following is required:

- Indigenous territories and communities;
- Used zones (water bodies, forests, houses);
- Conservation areas (territorial reservations, communities reservations, parks, etc.);
- Areas of high historical and cultural value (shrines, archeological sites).

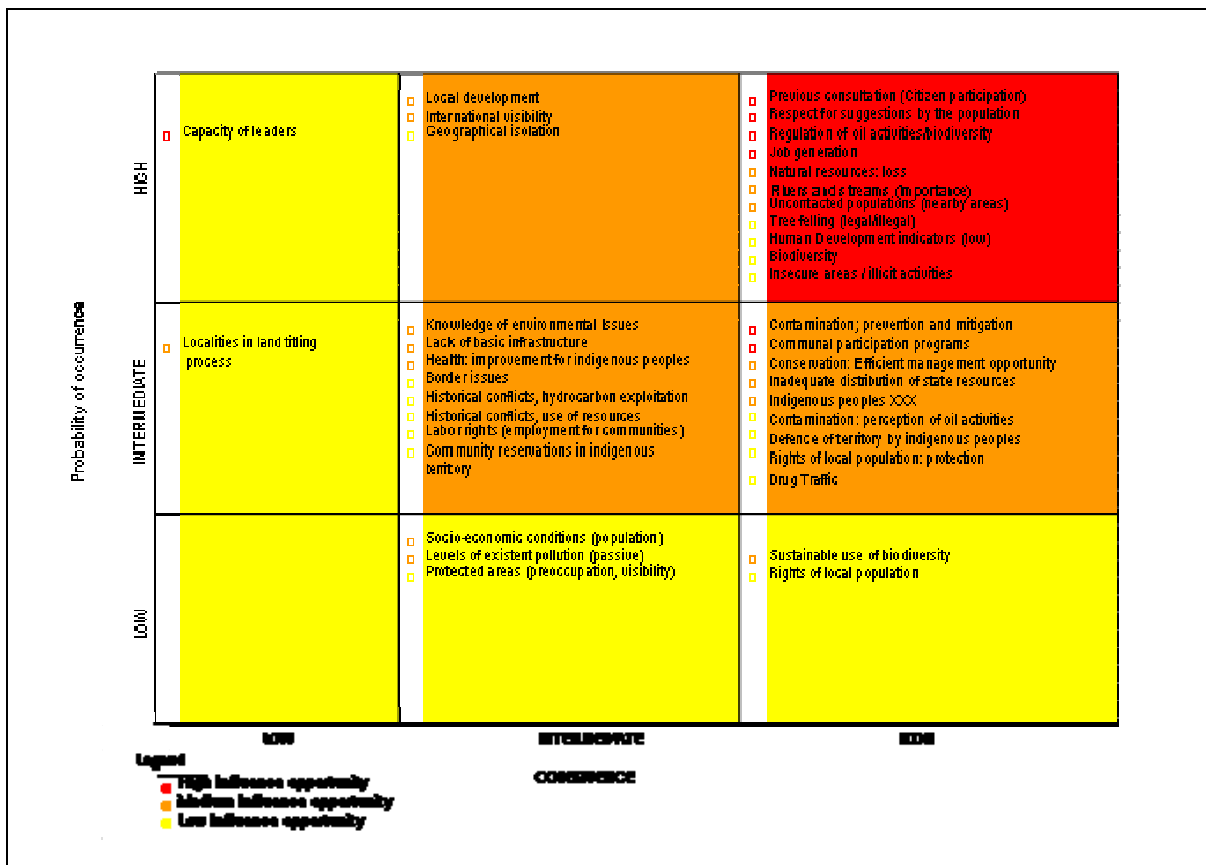
⁵⁹ See also section 3.2 Identification of stakeholders and interest groups.

4.1.4 Evaluation of Risks and Opportunities base on prioritized issues

Steps in the process of risk evaluation:

- Identification of stakeholders, interest groups and degree of influence (interest and influence) (see section 4.3)
 - Identification of possible impacts: preliminary Scoping, and a Survey of Environmental Impact are recommended. (see sections 3.2 and 4.2)
- Not all impacts create risks, nor do all risks result from direct impacts of the project's execution. They may be due to a poor or inadequate communications strategy, or to general perceptions of the industry and corporate investment in general.
 - Risk is determined on the basis of:
 - Probability of occurrence (estimated in values: low, intermediate or high).
 - The consequences of something happening, in case no preventive measures were taken (problem / opportunity).
 - The company's ability to influence a particular issue must also be considered. What can be used to turn the problem into an opportunity?, Or what are those risks over which you have no influence at the present stage of the project's development? Does risk management call for the participation of another responsible institution? (e. g., a State agency)

FIGURE 14 - CHART OF RISKS ACCORDING TO INTEREST ISSUE



4.1.5 Reputation

"...there are situations of reputational risks that cannot be prevented and possibly not anticipated. There are others which occur in spite of previous prevention measures. In these cases, there are interventions aimed at mitigating the project's effects on varying interest groups. On the one hand, it is critical to publicly announce the actions that the project is contemplating to mitigate directly, socially or economically, its negative effects on communities or relevant audiences⁶⁰"

Reputation is built day by day by each person within a company. However, it can be affected and sometimes destroyed in no time due to bad practices by only one member or only one branch in a distant place, far away from the project's area.

It requires a system of values, a "corporate ethics", constantly and consistently applied: a code of corporate ethics providing a frame for all proceedings and benefitting the company as well as the peoples and communities with which the company sometimes shares a given area.

Nowadays values are associated to key social issues:

- Protection of environment;
- Respect for human rights;
- Gender equality;
- Transparent management and fulfilment of commitments;
- Respect for local cultures;
- Aspects of sustainability and transparency;

There can be no generation of riches benefitting just one side of this relationship (Company-Community): it must manifest itself in an improvement of the quality of life for indigenous peoples, respecting their cultural values and identity.

The following chart shows a gradation of reputational risks. Although it was designed for financial corporations, it is also useful (along with the previous chart) to estimate the alarm levels in different scenarios. However, it must not be applied rigidly because reputational risks are difficult to predict, even less so in a gradation chart. Moreover, impacts and risk levels for indigenous peoples are related to the degree of relationship they have with the national market and society, to their degree of vulnerability. Therefore, it must be taken more as a guide than as a definite plan of action.

Scale of reputational risks, according to impact on institution and intervention level	
10	Catastrophical impact on the institution.
9	Crisis requiring urgent and extensive actions by the institution, including members of the Executive Board.
8	Serious setback requiring urgent action by the management team, with participation of Executive directors and/or the Company's President.
7	Setback requiring direct intervention by a vicepresident, with costly remediation actions.
6	Significant Impact requiring costly remediation actions but just minor intervention by a

⁶⁰ Source IADB Social and Environmental Unit –Corporate Department “Reputation Risks Associated to Environmental and Social Issues in the Development of Big Corporate Projects”, December 2006.

vicepresident.

- 5 **Moderate Impact** requiring urgent remediation but no intervention from managers.
- 4 **Moderate Impact** requiring urgent remediation, with precise costs.
- 3 **Low Impact** requiring urgent remediation, with moderate costs.
- 2 **Very Low Impact** requiring only preventive action or immediate remediation.
- 1 **Marginal Impact** not interfering with the project or the company's activities, with no financial cost.⁶¹

4.1.6 Risk Management

Accepting the existence of risks related to investment projects in the oil and gas industry in indigenous territories is a fundamental basis to be able to manage them, not only for the protection of a company's reputation but also for the protection of local populations.

Risk Prevention

The best way to act is to prevent, which requires:

- Adequate plans to prevent or mitigate impacts, basically those which could deteriorate the living conditions of indigenous peoples or their resources;
- Announcing the plans to indigenous communities and interest groups in a culturally appropriate process, including the media;
- Knowing and understanding differing positions and interests and paying attention to those which could alter the project and/or impact management planning;
- Understanding the effect of messages (for and against) that exist in and/or among communities;
- Working on the construction of credibility and trust, based on evidence of previously undertaken actions with other indigenous populations, where indigenous worries were taken into account, as well as the way to communicate with them and the results;
- Creating culturally appropriate communication materials explaining the project, its objectives and execution process, and the positive effects that are expected on the population at local, regional and national levels, as well as efforts to mitigate or compensate for negative impacts.

Some aspects to be considered when designing a risk prevention and management policy:

- Having a socio-environmental policy including safeguards of recognized indigenous rights, of national and international reach;
- Having a Behavior Code of Relationships with communities and the surrounding populations;
- The Code of Behavior must consider some key issues that communities find valuable (e. g. respect for women and children, undesired presence of workers in their territory). These codes should be made available to the authorities and the general population. It is also important that a communication channel be established for them to denounce possible code violations to the company responsible (e.g. community relationships office)⁶²;

⁶¹ Source IADB Social and Environmental Unit –Corporate Department “Reputation Risks Associated to Environmental and Social Issues in the Development of Big Corporate Projects”, December 2006.

⁶² See Communication System Section V

- Having a team of trained people (professionally skilled, having knowledge of standards and respectfully aware of the cultural value of indigenous peoples) to manage the relationship with indigenous peoples;
- Having an internal communication and training system for the entire staff regarding social and economic characteristics of the project area.

4.1.7 Crisis Management

Acknowledging the possibility of a crisis is helpful; such risks exist although they are uncertain, and can have serious consequences for the company and the populations.

- Anticipating how a crisis could develop (e. g. simulation exercises in case of spills, gas leaks);
- Pre-planning possible interventions (command lines, who will be the spokespersons, identifying audiences, preparation of basic material);
- Having a team of crisis management experts;
- Establishing a communication process with local populations and organizations (only one spokesperson, only one clear message, using local languages);
- Directly informing facts to regional or national media if necessary;
- Limiting damages to "telling the truth, as soon as possible, not trying to hide the facts";
- Acting at different levels, paying special attention and giving special resources to any directly affected indigenous populations.

CHECK LIST

REPUTATION AND SOCIAL RISK MANAGEMENT

Identification and risk management by a company must be carried out taking into account risks for its reputation as well as risks generated by its activities, particularly the well being of local and indigenous populations.

Dimensions and factors of risk analysis

Socio-cultural and political characterization relates to the following issues:

Governability related to political regime and recognition of political rights

Local socio-cultural conditions of indigenous peoples

Regional and local security and violence levels

Health Conditions

Risk evaluation and opportunities

Does the risk evaluation process follow these steps?

Step 1: Identification of possible impacts

Step 2: Identification of stakeholders, interest groups and degree of interest/influence.

Step 3: Determination of risk based on probability and potencial consequences

Step 4: Evaluate a company's ability to influence on a certain topic

Reputation

Reputation is a central element to generate wealth for a company as well as for indigenous populations. The construction of a good reputation requires a system of values expressed in a "corporate ethics code".

The "corporate ethics code" considers the following key social issues:

Environment Protection

Transparent management and fulfilment of agreements

Respect for human rights

Respect for local cultures

Gender equality

Sustainability and transfer of capabilities

Risk Management

The best way to act regarding risks is to ensure their prevention more than their mitigation.

The prevention policy of a company should include:

- a team of people trained to build relationships with indigenous peoples?
- a social and environmental policy, including the safeguard of indigenous rights?
- an internal communication and training system for the company's staff, related to social and economic local issues?
- an explicit code of behaviour, known by communities and by the staff?

Prevention requires, on the other hand, the consideration of different key issues.

Does the company...

- Have adequate management planning to prevent or mitigate impacts?
- Have these plans been given to public knowledge of indigenous communities through a culturally appropriate process?
- Does the company know and understand diverging interests and positions in relation to the project or the company itself?
- Does the company understand messages for or against the company itself or its project?
- Does the company work on the construction of credibility and trust based on concrete actions?
- Does the company create communication materials that are culturally appropriate to explain the project and its effects?

Crisis management

Does the company's crisis management...

Recognize the possibility of a crisis?

Anticipate the way a crisis could take place?

Pre-plan the company's possible intervention?

Have a team of experts on crisis management?

Have a communication process to communicate "the truth, as soon as possible", in relation to a crisis?

Act at different levels paying special attention to indigenous populations?

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4.2 ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

Social impact studies have as a goal the identification of possible consequences before the execution of a project or action that may impact on individuals, organizations and social systems within the influence area of that project or action or elsewhere. Social impacts include all consequences of an action on human populations when one of the following is modified: demographic dynamics, way of life, space use and management, environmental resources, working systems, leisure, interpersonal relations, organization, ways to satisfy needs, including cultural changes of internal rules, values or beliefs which guide and give sense to their world view and knowledge.

They include economic aspects, impact on economic structures and process, changes in employment, commercial activities, income, and use of natural resources.

Impact studies are special in the sense that they allow companies to foresee negative effects and accordingly recommend not only mitigation but also prevention measures before anything happens (it functions as an "early warning") as well as positive effects, allowing the design of specific actions and projects to enhance them. Therefore, they are closely related to the project, and their value and necessity are greater when the project is carried out in a sensitive area, as occurs with areas with indigenous populations.

4.2.1 Approach and methodology

To carry out an Environmental and Social Impact Assessment (ESIA), the following are to be considered:

- Type of population (communities, uncontacted peoples, peoples at initial stage of contact)
- Type of territory (delimited or not, recognized or

not)

- Types of ecosystems
- Type of project (exploration, exploitation, transportation, refinery, etc.)

The approach for a successful ESIA should respect the concept of sustainable development, that is to say, it includes aspects concerning development and environment sustainability; therefore, two dimensions are prioritized for a social baseline analysis:

- *Space*: an analysis of the spatial occupation process and management by native populations of their territories and their resources, identifying changes and processes which could result from the project's execution;
- *Time*: considering processes of change in social structures, accumulated impacts by different agents and different stages of the project, particularly during its inception and initial phases (e.g. seismic, before or during expansion operations).

Gender Perspective

Gender should be considered in the assessment, analytically related to the environmental and cultural dimension (gender and environment). Impact detection (vulnerability and population risk) as well as its measurement and mitigation measures, should consider the particular situation for the female indigenous population, their needs and interests. The impact mitigation actions must be designed with a

mind to contributing to gender equality and inclusion of both men and women, fostering the expansion of their functions and participation as subjects of development for a better living standard, including personal, family, and community levels

Dialogue and inclusion process

The methodological approach for studies in areas with indigenous populations privileges participative methods as a tool, fostering the inclusion of the population during the ESIA (today this tool is demanded by the peoples themselves and especially recommended by the International Labour Organization, the World Bank, the IADB, NGO's, particularly in the case of indigenous peoples) inducing an active participation in issues that matter to the whole community.

Secondary positive impacts of the inclusion of the local population in the survey process enhance local capabilities in the following aspects:

- Instruction and training;
- Strengthening of organizations;
- Better inclusion and participation in matters affecting their lives.

4.2.2 Methodology

Considering the socio-cultural characteristics of indigenous populations, the ESIA will use:

- **Quantitative methods:** official statistics (surveys, etc.). It must be determined whether it is adequate to obtain information through a household survey, when no official up-to-date information is available and/or when the available information is not enough to account for the socio-cultural and demographic characteristics of the population; register sheets at community level can also be used.
- **Qualitative methods:** they are necessary to know the points of view (worries, expectations) of the local population regarding the project, including authorities and different groups inside the communities (interviews, focus groups, magazines, Participative evaluation workshops).

The method choice must be in accordance with the information that is needed, as well as with the sources and objectives of every stage of the process. Although both methods are generally used, what varies is the tool in connection to the type of population, socio-political situation and project type.

a) Social baseline

Besides helping determine the social situation when a project is started, a social baseline provides basic indicators for social monitoring and social aspects related to the conservation of biodiversity. To the analytical entries suggested by World Bank Social Analysis approach, other relevant aspects must be added to determine the social and cultural situation in the project area:

- **Space occupation:** considering a particular analysis of the demographic dynamics (sex, age, ethnic groups, migrations) and territory occupation, as well as use of natural resources and change process in the use of space;
- **Human Capital:** analyzing conditions of population in terms of social assets: education, health, skills to satisfy their needs, access to opportunities to improve their living standard (including

activities and use of space). According to the kind of population, these skills are closely related to the use of natural resources;

- **Physical Capital:** related to common goods (e.g. territories, social infrastructure, productive infrastructure, communal buildings) and private goods (individual and familiar) owned by populations of the survey area, as well as the access to goods and opportunities improving their living standard and capital;
- **Social Capital and Organizations:** identifying social networks and organizations, analyzing their character, objectives and degree of population participation. In the same way, decision making processes and the construction of local leadership are analyzed, which provide us the degree of density of the social network and possibilities of vulnerability to impacts and risks, as well as participation and sustainability in social monitoring related to the project's execution;
- **Participation and inclusion:** "Participation is the extent to which social actors can influence development through their contribution to the project's design. It also indicates the degree to which the poor and excluded will benefit from access to opportunities" (WB 2000: 17-18). More particularly, female participation is desired as women are the poorest and most excluded group among the poor in the area;
- **Stakeholders and Local Social Actors:** identifying main actors in the area, their interests, mutual relationships and degree of participation. This analysis allows for the differentiation of impacts according to social groups. This aspect and the previous one are closely related to the communal consulting process;
- **Institutional level:** that is to say, the norms and rules ruling the life of the indigenous population, relationships inside the community and authority systems. More particularly, emphasis is given to space and natural resources use and management rules, and mutual relationships (types and tensions) with other actors using the same space and resources.

b) Communal consultation process

For projects affecting lands that indigenous peoples occupy or use (see section 3.3), it is normally the task of the State (according to ILO Convention 169) to start the process of information and consultation, introducing the people to the operating company and the consulting company which will carry out the Environmental and Social Impact Assessment (ESIA).

It is recommended, even though this is not required by international regulations, that a consultation process is carried out to inform and obtain opinions from the main actors, generating dialogue spaces to discuss the project⁶³, mainly with indigenous communities in the project area; that is why consultation with communities should be a priority.⁶⁴

Consultation makes it possible to identify the main worries of all interest groups, directly or indirectly affected by the project, as well as their characteristics, interests and degree of influence.⁶⁵ In this way, consultation contributes to better options and practices, maximizing opportunities and minimizing risks for communities and also for the project. The process also includes public hearings demanded by legislation in many countries. (See Annex N° 3).

⁶³ ILO Convention 169; WB OP 4.10 - July 2005.

⁶⁴ Schwartz y Deruyttere: *Community Consultation, Sustainable Development and the Inter-American Development Bank* 1996.

⁶⁵ World Bank (WB) Social Analysis Sourcebook: Incorporating Social Dimensions into Bank-Supported Projects, Social Development Department, Washington, DC, December 2003.

The approach used in consultation is also oriented to the identification and prevention of conflicts, problems that can be addressed during the planning stage; it avoids a mis-communication on the projects aim and scope, to clarify these aspects. This process facilitates learning and understanding of local knowledge and values.⁶⁶

Interested or engaged sectors are people or groups who will likely be affected, directly or indirectly, by the project. The process of prior consultation ensures that these groups contribute to the ESIA for the different aspects of the project.

The process of consultation makes the following possible:

- Identification of social actors, awareness of their perceptions and interests;
- Providing transparent information about the project;
- Wide participation of the main actors, early interaction of interest groups with the project's leaders and the State representatives;
- Gathering information;
- Identification of impacts;
- Identification of prevention and mitigation measures.

c) Identification of Impacts and Measures for Prevention and Mitigation

Impact identification takes into account different effects according to gender and generation at different levels: family, community, institutions and organizations; that is to say, in the social and cultural structures of directly affected populations.

A first level of impact identification of prevention and mitigation measures is produced during the consultation process and work field of the ESIA, therefore it is participative and the method will be qualitative. The identification of impacts during consultation can also help identify the reasons of these impacts (actions from the project or other agents and their receptors (environmental or social), as well as the best prevention and mitigation measures for the affected indigenous peoples.

To be considered:

- Sources and activities which could have an impact, by the project or other sources;
- Type of impacts: quantity, duration, sensitivity of receptors, distance from receptors;
- Receptors and type of effects: population health by gender and generation, damage to fauna, flora, etc;
- Identification of cumulative impact;
- Value of impact: positive or negative.

The following set of questions can be part of the consultation with the community:

- Information to be given to the community:
 - What will happen?
 - When will it happen?

⁶⁶ More details can be found in "Guía de Relaciones Comunitarias". D.S. N° 003-2000-EM del Ministerio de Energía y Minas, Gobierno del Perú.

- How will it happen?
- How long will it take? (temporal or permanent)
- How often will it happen?
- Motivating questions for impact identification:
 - How could that affect you?
 - Who would be affected?
 - What area would be affected?
 - What receptors and resources are there in the area?
 - What would be the magnitude and importance?
 - Could the impact be reverted?

Finally the task is to identify prevention and mitigation measures with the communities.

The ESIA also identifies the Prevention and Mitigation measures and indicates if the case requires deep studies, as well as the responsibility for the action (company, regional government, central government, other sectors or combinations of groups), suggesting operative recommendations to be included in the Environmental Management of the company.

4.2.3 Tools and Procedures for the different components of the ESIA

a) Social Baseline

The creation of a social baseline starts with the gathering of bibliographic information through search, revision and systematization of publications, reports and information on the project area and related issues.

Socio-cultural overview, communities and populations included, brief history and characterization:

- Reference to archaeological studies on previous human presence and possible remains in the area;
- Demography of native communities, settlements of other populations in the area;
- Social structure, family units, social groups, organizations, membership and institutions.

This first search makes it possible to know the change process of the use of space and the populations living there.

In a second stage, primary data are taken through fieldwork information gathering, applying a protocol of research created with the following basic goals:

- Gathering up-to-date socio-environmental information (specific for the area), verifying bibliographical information and updating data.
- Incorporating the population in the ESIA process, carrying out the consultation with the community and fostering its participation.

- Achieving a better understanding of the area and the local dynamics based on first hand experiences.
- Consulting with people who could be affected by the project, informing them about it, recording their comments, worries, fears and demands. They were used for the baseline and for identifying, assessing and suggesting preventive or mitigation measures concerning the project's impact in the surroundings.

b) Field Work

It is a key activity for the development of the ESIA, allowing:

- Knowledge of and direct contact with authorities and communities that could be affected;
- Gathering primary data, qualitative and quantitative, about:
 - Education, characteristics, access to education, gender differences;
 - Health, health care, main diseases;
 - Communal resources and infrastructure, transportation routes, path and river ways, services which provide energy and water, education, leisure, shops and commerce, penetration of media and influence of media;
 - Activities related to the economy and employment, commerce, family income levels, income for communities and the region;
 - Ownership of land and right of use for communities, legal situation;
 - Use of space and resources of the forest: access and management of natural resources and survival activities (hunting, fishing, fruit gathering, agriculture, commerce);
- Identifying possible impacts on each community;
- Identifying together the worries of the communities of the area related to environmental and social aspects of the project;
- Identifying and thinking together of adequate prevention and mitigation measures.

c) Tools for gathering information

- **Meetings with Communities** to explain to the communities aspects of investigation and ESIA work. These meetings are also useful to gather information on the community's worries related to environmental and social aspects of the project, working with the method Workshops for Participative Rural Assessment (WPRAs)
- **Workshops for Participative Rural Assessment (WPRAs)**, carried out in communities (or the lowest institution with legal representation, e.g. Native Communities, Reservations, if there are different sub-units, the organization of workshops for each sub-group is recommended) and populated centers in the area, giving special emphasis to the participation of women, youth, and elderly people, to work collectively on diagnostics, tendencies and change processes. Instruments are used to measure time and space aspects through cognitive maps to identify areas that are used and that have a social value. These participative maps provide valuable information on the socio-cultural baseline and allow the geographic identification of highly sensitive areas related to survival of daily activities, creating a profile of activities and avoiding early impacts on everyday life and the standard of living of the populations.

- **Household Survey (HS)**, in most countries there are no population surveys of the indigenous population, or the data do not specify individual communities and peoples; that is why a special survey is required. It is necessary to consider the sample selection (the bigger the population, the bigger the number of sample units that is required). These data will be a starting point for social monitoring actions and will constitute a reference point to compare with future assessments of socio-demographic changes in the area
- **Interviews** semi-structured, with authorities and key members of communities and family leaders, also useful to complete the qualitative information, the data gathered through questionnaires and recording their opinions, worries, as well as to respond to local authorities.
- **Population records** to identify the total number of inhabitants, gender and age and demographic tendencies. In some cases, depending on the communal organization, local authorities keep early records of the people in the community; these data are valuable, being the nearest and most acceptable way to get demographic data in areas with an indigenous population.
- **Traffic Record (rivers, air, land)** Hydrocarbon projects affects the traffic density in the operational area. River Traffic must be carefully tracked as it can affect bodies of water. The record (it is highly recommended that community members carry it out) allows the assessment of changes and alterations in the life of the local population.
- **Field Observation (participative observation)** and record of quantitative and qualitative aspects, less evident in communities.

d) Participation of local population in the ESIA process

One of the central aspects of the ESIA methodology's approach is participation, related to the training of the local population. The population must be included in the process as researchers and assistants; it is recommended that they are chosen by their community and include both genders. They should be trained on the ESIA methodology in order to enlist their help with the surveys, keep records, be translators and facilitate fluid contact with the local people. This participation mechanism makes the survey more transparent, helps spread information inside communities, and the participants can be potential coordinators and help with monitoring of the social and environmental aspects in each community, as related to the project

4.2.4 Methodology for surveys in areas with possible presence of uncontacted or isolated populations

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a) Approach

Considering the high sensitivity and vulnerability of these indigenous peoples and societies, the approach suggested for these cases is to follow the principle of **avoiding direct contact** with these populations.

Following the policies of protection of indigenous rights stated by ILO Convention 169, The Universal Declaration on Cultural Diversity (UNESCO 2001)⁶⁸, and other national and international regulations, some guidelines must be followed to protect the rights of indigenous peoples and groups in a situation of isolation.

⁶⁷ Based on documents created by Martha Rodríguez Achung (ERM 2006, 2007, 2008)

Indigenous peoples in this situation or in a stage of initial contact could be affected by meeting social agents (including researchers, surveyors, etc.), which could endanger their fundamental right to life, social, cultural, and moral integrity, well-being and free development.

b) Methodology and Tools

Indirect methods are privileged, for primary and secondary information:

- Analysis of bibliography, particularly by competent organizations (many states have nowadays specialized agencies for these populations, such as Peru and Brazil) and academic surveys (historical or from the present time), reports and surveys by NGO's;
- Analysis of data gathered in communities and populations bordering the evaluation area: frequently community members and nearby peoples use areas for hunting, fishing or fruit gathering. The Household Surveys, the Map of Use of Natural Resources, and interviews, provide valuable information;
- Analysis of satellite information (vegetation, physical features, water bodies, areas with intervention, etc.). Satellite images are an appropriate tool to assess an area without causing impacts. Nowadays there are images with high-definition (60cm) which can be taken during different moments of the whole year. However, the interpretation of images requires the use of other tools, in this case consulting with experts and or flying over the area at moderate altitude;
- Carrying out specific workshops on the subject with the participation of specialized social scientists, representatives of indigenous organizations and social actors (NGO's, State) which can provide knowledge and assess possible impacts;
- In each case it should be evaluated whether it is appropriate or not to fly over an area and take photographs.

c) Integrated Analysis

The methodology of integrated analysis consists in relating different references and evidence from different information sources, which previously were individually analyzed, to integrate in a spatial analysis.

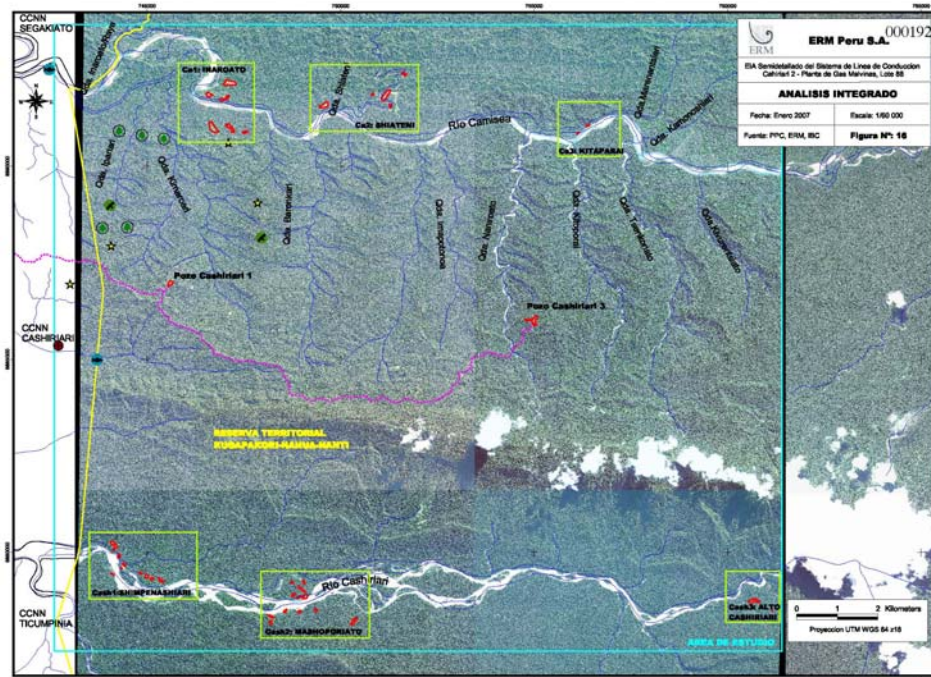
Because of the different information sources, some references are geographically located and some are not. Bibliographic information, cognitive maps created in nearby communities and household surveys are not usually geographically referenced, while satellite images and cartographic information is geographically located.

Therefore, as far as it is possible, the task is to locate in space all references about resource use and possible inhabitants, trying to match them with the information from the Geographical Information System.

The main geographical references are rivers. From the cognitive maps, river names can be identified and then some specific bibliographic references can be located. Results from surveys and interviews complement the information on resources used, which were drafted in the cognitive maps.

⁶⁸ For projects financed by international banking, the regulations established by the WB must also be considered (WB 2005: OP 4.10); Performance standards 4, 6 y and particularly 7 from the International Finance Corporation (IFC 2006) and OP-765 Operative Policy on Indigenous Peoples of the IADB (2006).

FIGURE 15 - INTEGRATED ESIA MAP IN THE AREA OF KUGAPAKORI, NANTI, NAHUA, AND OTHER RESERVATIONS, PERU



Source: ERM- PPC. Estudio de Impacto Ambiental Semidetallado del Sistema de Línea de Conducción Cashiriari 2 - Planta de Gas Malvinas, Lote 88 Línea Base Social. Lima - Perú. January. 2007. PP. 193.

The result will be a first systemization of the state of the art, and agreement on proposals for prevention and mitigation measures, formulation of strategies, under the principles of respecting human rights and specific rights of uncontacted, initial contact stage or voluntarily isolated peoples.⁶⁹

4.3 PREVENTION, MITIGATION AND COMPENSATION

“Mitigation can be defined as the stage in the ESIA process in which measures are identified to avoid, minimize or offset adverse social impacts. The project sponsor should consider ways to modify the project design or mode of operation in order to avoid or at least minimize negative social impacts”⁷⁰.

“For operations affecting indigenous peoples in a negative and significant way, agreements will be required to prove the viability of the project. (f) According to the nature and intensity of potential impacts or benefits, the appropriate procedures for consultation, good faith negotiation, agreement or consent, and participation in later stages will be applied, such as

⁶⁹ For an early prevention strategy in areas not declared as indigenous territories or areas with uncontacted population or about which information is uncertain and the possibility of contact is remote, see: Rodríguez Achung, Martha et al Planning and Executing EIA Baseline Studies in Remote and Socio- Economically Complex Regions with Potential for Uncontacted People: Practical Guidelines from Working in Northern Peru. Copyright 2008, Society of Petroleum Engineers **SPE 111681**

This paper was prepared for presentation at the 2008 SPE International Conference on Health, Safety, and Environment in Oil and Gas Exploration and Production held in Nice, France, 15–17 April 2008.

⁷⁰ IFC, Good Practice Note. Addressing the Social Dimensions of Private Sector Projects Good Practice Note. December 2003.

project's design and alternatives, incorporation of mitigation, compensation or indigenous development plans, according to the case, implementation, monitoring and evaluation to foster the creation of criteria agreed in common with indigenous peoples over projects and appropriation by them of processes and results that are desired" ⁷¹.

Misconception on Compensation

"It is still possible to identify some basic assumptions underlying company practice that can become, or feed into, conflict issues:

Land and assets can be monetised. *The assumption that land and assets can be directly compensated for in cash, given the right arrangement, does not acknowledge the cultural value of land in contexts that stress a critical relationship between people and the land on which they live;*

Compensation is a finite process. *A negative result of this can be demonstrated by company/community clashes that are based on divergent views about the value of land. The company claims it can do with the land whatever it wants, while local people perceive that they can never be alienated from it, and that the land always 'belongs' to them*

Compensation is a benefit to local people. *This assumption leads to a company expectation that people who are compensated should show gratitude and not be too demanding in requests for employment, contracts or community services. This tends to be the case where communities have been compensated with new houses or other assets of better quality than the original ones. This expectation overlooks the reality that communities often do not associate compensation with a benefit but with loss of land, their previous community structure and other non-tangibles*

Negotiation should aim to pay the lowest compensation possible in persuading others to agree to a document. *This approach, which companies sometimes bring to the negotiations during compensation claims – when their land departments are under pressure from the operations department 'to deliver' – has a negative impact on engagement. Communities may feel under pressure to sign an agreement. Companies may obtain a short-term, cost-effective legal solution but undermine their relationship with communities in the longer term."*

Source: International Alert. Corporate Practice Sensitive to Conflict: Guidelines for the extracting industry 2005 Section 4: Focus pp. 21-22

The following agreements of ILO Convention 169 are oriented to indigenous rights in case their lands are affected and particularly when they are relocated because of the project's execution⁷²:

Art. 15.2 ILO 169 Manual: The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Art. 16.4 ILO C169 Manual: When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the

⁷¹ Deruyttere, Anne (Coord.) (2006) Operational Policy on Indigenous Peoples and Strategy for Indigenous Development. Series of strategies and sector policies from the sustainable Development Department. Interamerican Development Bank, pp 47-48.

⁷² ILO Convention on indigenous and tribal peoples, 1989 (No.169): A manual.Geneva, International Labour Office, 2003.

peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

Article 16.5: Persons thus relocated shall be fully compensated for any resulting loss or injury.

Compensation: Indigenous and tribal peoples have the right to receive a complete indemnity for any loss or damage caused by relocations, for example loss of goods, negative effects on health due to climate changes, etc.

TABLE 5 - TYPES OF COMPENSATION

Type	Definition	When to Apply	How to Compensate
Individual	Consists in payment, in kind or cash, to somebody directly affected by the project. It is the cost of compensation for the loss of their assets.	An individual compensation is required in areas where the individuals that are potentially affected can be considered self-sustaining and without their lands, they would find it extremely difficult to feed their families and pay for other basic needs. The loss of any kind of useful products for the community or the individual must be compensated. These products can include trees, which are an important part of everyday life for local populations, even if there is no intrinsic financial value.	Determining the appropriate way to compensate is a part of the process. Compensation in kind is an important option for some populations, especially rural and isolated ones. The concept of compensation in kind is giving goods that are useful in everyday life and remedy the loss or changes. To ensure that the goods given are useful, it is important to visit the area and ask the population what kind of goods will be more useful to them. A compensation in kind can ensure that the compensation is "sustainable" and not wasted. Compensation in cash and its financial management is a key element in compensation programs. Other appropriate compensation methods can be training or land titling.
Community	Consists in payment in kind or cash to a community that has suffered an impact due to the project, for example loss of land or forest, water interruptions, loss of trees, etc.	Compensation for the whole community is necessary where communal goods will be affected and all the community uses them, for example water ways, forest, trees, roads, etc. Indigenous Peoples may prefer a compensation for the whole community.	For a program of compensation for the community, consultation is crucial, as well as the participation of the whole community in its design and implementation (including elders, women, etc, etc.). <ul style="list-style-type: none"> • Initial survey for programs of communal compensation; • Incorporation of public consultation during each stage of the program; • Assessment of negative effects on the community, employing members of the local community to help complete the survey; • Completing an assessment of the kind of compensation items adequate for the communities; • Process for decision making in community compensation.
Regional	The principle behind a regional compensation is to implement projects for communities of the whole region affected by the project and therefore benefitting the whole population. Thus the benefits are shared in a wider way in the affected areas. Regional compensation will also benefit people not affected by the project.	Regional compensation is given because of the temporal loss of communal natural resources not individually compensated, the nuisance for the community of the building stages, restrictions in land use within the system of land management during the project, and other nuisances, in order to ensure that benefits are shared by communities in general.	Payment in kind is more appropriate for a regional compensation; for example, vaccination campaigns, health warning campaigns, etc. This kind of compensation requires introduction and consultation to see whether the communities wish to share the compensation on a regional or communal basis. A previous evaluation must be carried out to determine their necessities and priorities. This information must be gathered consulting different groups such as youth, women, men, and elderly people. In this kind of project, the creation of expectations must be dealt with from the beginning. Sometimes the population expects benefits that are beyond the company's reach. It is important at the beginning to make clear the kinds of projects that can be implemented to avoid misunderstandings, conflicts and disappointments. The calculation for regional compensation depends on the company and on meetings with the other parts (government, Indigenous Peoples). The main thing is to have an idea of the amount for compensation in each region or community before the consultation with local inhabitants, in order to avoid false expectations. A key aspect for regional compensation is information gathering, monitoring and control of the project, allowing assessment of the impact of regional compensation on the population.

Source: Canaves, Lissette; Roza, Marlene; Rozon, Gord; Stuar, Robt, y Zárate, José (2004) Aspectos Relevantes al Proceso de Reglamentación Socio-ambiental en América Latina. Informe Socio-Ambiental de ARPEL N° 2,ESSA, Uruguay, 2002, p. 134.

ANNEX V - Example of a Social Baseline Content Outline

	INTRODUCTION
	INFLUENCE AREA OF THE PROJECT
	OBJETIVES OF SOCIAL SURVEY
	APPROACH AND METHODOLOGY FOR SOCIAL BASELINE
4.1	Methodology
	4.1.1 Social Baseline
	4.1.2 Process of Consultation with Community
	4.1.3 Tools and Procedures
	4.1.3.1 Social Baseline
	4.1.3.2 Specific Objetives of Field Work:
	4.1.4 Methodoly for Social Baseline based on Health
	4.1.5 Participation of Population
	4.1.6 Process of Consultation with Community
	PROCESS OF AREA OCCUPATION AND SPACE ORGANIZATION IN THE SURVEY AREA
5.1	Occupation: Historical Background
	5.1.1 Origins
	5.1.2 Colonial Times
	5.1.3 The Republic
5.2	Activity of Oil Exploitation in the Area
	SOCIOECONOMIC CHARACTERISTICS OF THE COMMUNITIES IN THE SURVEY AREA
6.1	Population and Demograhic Tendencies
6.2	Structure by Sex and Age
	6.2.1 Family characteristics
	6.2.2 Migrations
6.3	Human Capital
	6.3.1 Education
	6.3.1.1 Level of Education by Sex and Age
	6.3.1.2 Level of Education of Household Leaders
	6.3.2 Health
	6.3.2.1 Health in the area
	6.3.2.2 Diseases and Attention systems for Families
6.4	Social Capital: Local Organizations and Institutions
	6.4.1 Social Structure
	6.4.2 Participation of Women and New Roles
	6.4.3 Institutions and Local Organizations
	6.4.4 Social Tissue in Communities of the Area
	6.4.4.1 Native Community XXXX
	RESOURCES
7.1	Environmental Resources
	7.1.1 Access to Land and Ownership
	7.1.2 Access to Forest Resources
	7.1.2.1 (Analysis by community)
7.2	Communal Resources and Infrastructure
	7.2.1 Housing, Energy, and Water
	7.2.2 Infrastructure of Health Services
	7.2.3 Education Infrastructure
	7.2.4 Leisure Infrastructure
	7.2.5 Communications Services
	7.2.6 Citizen Safety Service
7.3	Transportation Routes

	7.3.1	Transportation and Fluvial Ways
	7.3.2	Transportation by Air
	7.3.3	Transportation by Land
7.4		Economic and Productive Infrastructure
	7.4.1	Tourism and Accommodation
	7.4.2	Wharfs
	7.4.3	Heliports
	7.4.4	Stores and Commerce
		PRINCIPAL ACTIVITIES RELATED TO ECONOMY AND EMPLOYMENT IN GENERAL
8.1		Employment by Main Occupation in PEA, by Sex and Age
8.2		Main occupation in PEA
8.3		Paid Employment
8.4		Family Income
	8.4.1	Consumption
8.5		Commercialization
		USE OF NATURAL RESOURCES BY COMMUNITIES
9.1		Hunting
	9.1.1	Hunting Areas
	9.1.2	Frequency and Effort of Hunting
	9.1.3	Most Frequent Prey Species
	9.1.4	Hunting Methods
	9.1.5	Destination of Preys
	9.1.6	Tendencies in the Perception of Prey Amount
9.2		Fishing
	9.2.1	Fishing Areas and Corresponding Distances
	9.2.2	Frequency and Effort of Fishing
	9.2.3	Most Frequent Fished Species
	9.2.4	Fishing Methods
	9.2.5	Destination of Fish
	9.2.6	Tendencies in the Perception of Fished Amount
9.3		Forest Product Gathering
	9.3.1	Gathering Areas
	9.3.2	Frequency and Duration of Gathering Activities
	9.3.3	Frequently Gathered Species
	9.3.4	Tendencies in the Perception of Gathered Amount
		ARCHAEOLOGY
		SOCIO-CULTURAL CHARACTERIZATION
		ANNEXES
		List of Maps
		List of graphs
		List of photographs
		List of tables and statistical charts

ANNEX VI - Example Social Baseline Outline Content for Areas with possible presence of Uncontacted and/or Isolated Population

	Introduction
	Objective
	Survey area
	Methodology
4.1	Approach
4.2	Methods and Tools
	4.2.1 Specialized Bibliography
	4.2.2 Mapa of Natural Resources Use by Nearby Communities
	4.2.3 Houshold Survey (HS in nearby populations)
	4.2.4 Interviews with nearby populations
	4.2.5 Satellite Images
	4.2.6 Integrated Analysis
	Results
5.1	Analysis of Bibliography
	5.1.1 Historical Background of Occupation of the Area
	5.1.2 Current Occupation and Human Presence
5.2	Analysis and Interpretation of Use Maps of NC
5.3	Analysis of Houshold Surveys (HS)
	5.3.1 Zones of Use
5.4	Interpretation of Satellite Images
5.5	Integrated Analysis
	Summary-characterization
	Archaeology
	ANNEXES
	List of Maps
	List of Graphs
	List of Photographs
	List of Interviewed People
	List of Tables and Charts
	Bibliography

ANNEX VII - Process of Participation and Consultation with Indigenous Communities

See specific regulations in Annex IV Page 64, Chapter 3 of the Manual

CHECK LIST

ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

Environmental and Social Impact Assessment (ESIA) have as a main goal the identification of consequences of a company's action on individuals, organizations and social systems. These surveys allow the company to foresee early enough the negative effects of a project in order to anticipate and take adequate prevention measures.

ESIA Approach

The approach for an ESIA is guided by the conception of sustainable development, socially and environmentally.

In the design of the survey, the following dimensions and pre-selections are taken into account:

- Space?
- Time?
- Gender?
- Perspective of participation and consultation?

Dimensions and topics of the ESIA For the Social Baseline

The Social Baseline permits analysis of the social situation at the beginning of the project, providing basic indicators for social monitoring, as well as aspects related to biodiversity.

The Social Baseline makes it possible to account for:

- Space occupation?
- Human capital?
- Physical capital?
- Social capital and present organizations?
- Indigenous institutions in the area?
- Stakeholders and key local social actors?
- Participation of social actors in the survey and consultation process?

In a subsequent check list, relevant aspects of the methodology for a social baseline are considered.

For impact identification and prevention and mitigation measures

Are the following aspects considered in impact identification?

<ul style="list-style-type: none"> • Potential sources and activities which could have an impact? 	
<ul style="list-style-type: none"> • Different kinds of impact? 	
<ul style="list-style-type: none"> • Different kinds of receptors and types of effects on them? 	
<ul style="list-style-type: none"> • Cumulative impact identification? 	
<ul style="list-style-type: none"> • The positive or negative value of identified impacts? 	

For impact identification and the decision on prevention and mitigation measures, have the following sources of information been considered?

<ul style="list-style-type: none"> • Information arising from the consultation process and community participation process 	
<ul style="list-style-type: none"> • Information obtained through analysis by the research team 	

Types of compensation

Compensation as an impact mitigation strategy is a delicate process; determining who are the people to be compensated and how to do, so is a crucial part of the process.

In case of compensation, will any of the following kinds of compensation be used?

<ul style="list-style-type: none"> • Individual Compensation? 	
<ul style="list-style-type: none"> • Compensation for the community? 	
<ul style="list-style-type: none"> • Regional Compensation? 	

DEVELOPMENT OF THE SOCIAL BASELINE	
<i>The most important requirement for the development of a Social Baseline is the information on social environment. This information must be gathered from different sources.</i>	
Stage I: Bibliographic Information	
<i>This first search makes it possible to know how the use of space has changed over time as well as the populations inhabiting that space.</i>	
Does the bibliographic information that was obtained refer to these topics?	
<ul style="list-style-type: none"> • Historical background of the population and possible archaeological evidence 	
<ul style="list-style-type: none"> • Identification of native communities and other settlements in the area 	
<ul style="list-style-type: none"> • Demography, social structure, family units in communities 	
<ul style="list-style-type: none"> • Social groups, organizations, memberships and institutions with influence or interests in the area 	
Stage II: Gathering primary data	
<i>The gathering of original, primary data, must be made through field work, carried out using research protocols.</i>	
Does the research protocol include the following goals?	
<ul style="list-style-type: none"> • Achieving a better understanding of the area and the local dynamics 	
<ul style="list-style-type: none"> • Gathering up-to-date social information, verification and upgrading of information obtained in Stage I 	
<ul style="list-style-type: none"> • Incorporation of the population in the ESIA process, fostering their participation 	
<ul style="list-style-type: none"> • Carrying out a consultation process with stakeholders who could be affected by the project 	
<ul style="list-style-type: none"> • Specifying criteria and procedures to record information and statements given by consulted people 	
Will the field work attempt to obtain primary data on the following qualitative and quantitative aspects?	
<ul style="list-style-type: none"> • Education 	
<ul style="list-style-type: none"> • Health 	
<ul style="list-style-type: none"> • Communal Resources and service and transportation infrastructure 	

<ul style="list-style-type: none"> Economic and survival activities, employment, income levels for families, the community and the region 	
<ul style="list-style-type: none"> Land ownership, legal situation and right of use for communities 	
<ul style="list-style-type: none"> Use of space and natural resources 	
<ul style="list-style-type: none"> Identification of possible social impacts 	
<ul style="list-style-type: none"> Identification, in collaboration with the communities, of environmental and social worries they may have 	
<ul style="list-style-type: none"> Identification and collective treatment, together with the communities, of proper mitigation measures 	
<p>Have any of the following methodological tools been selected for information gathering?</p>	
<ul style="list-style-type: none"> Meetings with the community 	
<ul style="list-style-type: none"> Workshops for Participative Rural Assessment (WPRAs) 	
<ul style="list-style-type: none"> Household Surveys (HS) 	
<ul style="list-style-type: none"> Interviews 	
<ul style="list-style-type: none"> Population records 	
<ul style="list-style-type: none"> Traffic records (Land, river, air) 	
<ul style="list-style-type: none"> Observation and field record 	
<p>ESIA in areas with uncontacted or voluntarily isolated populations</p> <p><i>Due to their high sensitivity and vulnerability, for the study of these populations a methodological approach is suggested, following the principle of avoiding direct contact with them:</i></p> <p>For information gathering, has any of the following indirect methods been chosen?</p>	
<ul style="list-style-type: none"> Analysis of bibliographic information 	
<ul style="list-style-type: none"> Data gathering in nearby communities and populations adjacent 	
<ul style="list-style-type: none"> Analysis of remote information (satellite) 	

<ul style="list-style-type: none"> • Specific Workshops with social scientists 	
<p>Is an evaluation conducted as to whether or not it is appropriate to fly over the area and take photographs?</p>	

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4.4 MANAGEMENT OF SOCIAL AND ENVIRONMENTAL CONFLICTS

*"A conflict that occurs across cultural boundaries thus is also occurring across cognitive and perceptual boundaries, and is especially susceptible to problems of intercultural miscommunication and misunderstanding. These problems exacerbate the conflict, no matter what the root causes of it—including strictly material interests—may be. In this sense culture is an important factor in many sorts of conflicts that at first may appear to be exclusively about material resources or negotiable interests. Understanding the impact of cultural difference is especially important for analysts or practitioners of conflict resolution who work in intercultural contexts, since culture affects many of the communicational or interlocutory processes that lie at the heart of most conflict resolution techniques. Finally, because of increasing transnational exchanges, the coming century will see many more encounters among individuals of all backgrounds that are intercultural in nature."*⁷³

The concept is related to "perceived interest differences or the belief that no agreement can be reached"⁷⁴. Alternatively, as the fight over values and access to scarce resources, where the aim is to neutralize and even annihilate the rival.⁷⁵

*"Conflict is a normal result of human differences and not of the satisfaction of needs"*⁷⁶

It is common to use the word 'conflict' as a synonym of violence; however, this is just one of its manifestations.

Hydrocarbon activities represent technological advance, development, progress, and capital; however, they also often represent what is foreign, they represent power, and other attributes of local perceptions, while the local communities, in the case of indigenous territories, are characterized by attributes such as "tradition", social and sometimes political exclusion, poverty and loss of resources. On top of that, these basic differences are influenced by perceptions of negative experiences of the past, and by material facts: while indigenous peoples depend on the resources of the forest for survival and need what is found at the surface, the gas and oil industries are interested in what lies underground. But their activities will have an impact on the surface and on the resources used by these populations. Therefore, both interests can readily be seen as opposed.

⁷³In Conflict Resolution, [Ed. Keith William Hipel], in Encyclopedia of Life Support Systems (EOLSS), Developed under the Auspices of the UNESCO, Eolss Publishers, Oxford ,UK, [<http://www.eolss.net>]. En: <http://www.eolss.net/ebooks/Sample%20Chapters/C14/E1-40-01-01.pdf> (reviewed on 09-18-08)

⁷⁴ Pruitt, Dean y Jeff Rubin, Jeff. Social Conflict: Escalation, Stalemate, and Settlement. 2nd Ed., McGraw Hill, New York, 1994.

⁷⁵ Coser. The Functions of Social Conflict. Free Press, New York, 1956.

⁷⁶ Mitchell, et al, ICAR-GMU 2000.

4.4.1 Potential Interactions between Investments in Oil and Gas Projects and Conflicts with Indigenous Peoples

TABLE 7 - POTENTIAL INTERACTIONS BETWEEN INVESTMENTS IN OIL AND GAS PROJECTS AND CONFLICTS WITH INDIGENOUS PEOPLES

Caused by the Project	Caused to the company by de escalated conflict
<p>Socio-cultural Impacts</p> <ul style="list-style-type: none"> • Use of indigenous peoples' territory. • Resettlement of families and villages. • Immigration to indigenous territories-pressure on territories and forests. • Changes in diet • Disruptions (by noise, limitations in the movement of the population, etc.) on daily life • Sea, air, and land transportation accidents in greater frequency. • Appearance and extension of new diseases in the zone-epidemics. 	<p>Socio-economic</p> <ul style="list-style-type: none"> • Militarization of the operation zone • Loss of financial and productive resources because of a blockade or impediment to the continuity of work. • Loss of days and non-productive energy. • An action of "pacification" with repression by the State and the company's deteriorating national and international reputation. • Damage to the local population through actions of "pacification"- Rupture and deterioration in the relationship with the indigenous peoples.
<p>Environmental Impacts</p> <ul style="list-style-type: none"> • Deforestation. • Disturbances in hunting, fishing, and gathering zones. • Water and land contamination. • Increase in noise. • Loss of biodiversity resources 	<p>Environmental Impacts</p> <ul style="list-style-type: none"> • Deforestation that causes ground erosion which puts at risk the company's infrastructure and associates it with damage to the local populations. • Spills occasioned by taking pipelines during the escalation of the conflict. • Increase of risk of environmental accidents because of paralyzing or the taking of installations. • Negative environmental impacts directly influence the company's reputation.

Source: Elaboration based on International Alert "Conflict-sensitive Business Practice Guidance for extractive industries. March 2006

However, there also exist spaces to find interests in common that permit a more positive interaction between the company and indigenous peoples⁷⁷:

- The company needs specialized workers (that know the forest and are adapted to the climate) for the exploratory phase;
- Local populations need to obtain monetary recourses through their work;
- The company's need to maintain and construct a good reputation not only locally, but internationally, as responsible action is good for all parties;
- Indigenous peoples' rights are recognized on a global level;
- Policies of social responsibility and norms of social and environmental work based on good practices, associated with the company's prestige and reputation.

These interests are also elements that permit the construction of dialogue spaces, negotiation, and sustainable agreements.

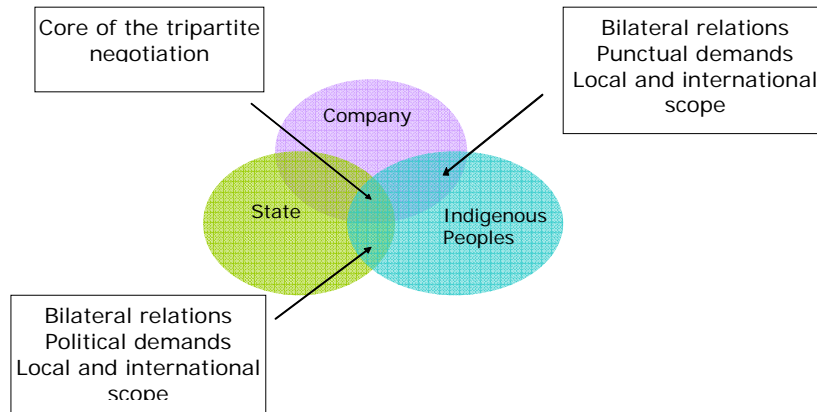
4.4.2 The Dynamics of Conflict

The conflict is present in the relationship between the company and the indigenous peoples, meanwhile there exist a range of interests that are perceived to be contradictory and often completely opposite and insuperable. However, as it has been said, there exist spheres of compatible interests that permit working in a process of construction of dialogue spaces, negotiation, and agreements.

For these spaces of interest to manifest themselves in a positive manner in the relationship it is necessary that first the company recognizes the existence of the populations that occupy the territory and make use of the ground's resources ancestrally, that where the gas and oil industries need to explore and exploit the subsoil resources in the majority of countries in the Latin American Region and the Caribbean are recognized as public goods. From there the basic interaction is given between three key actors or stakeholders: State, Company and indigenous peoples/communities.

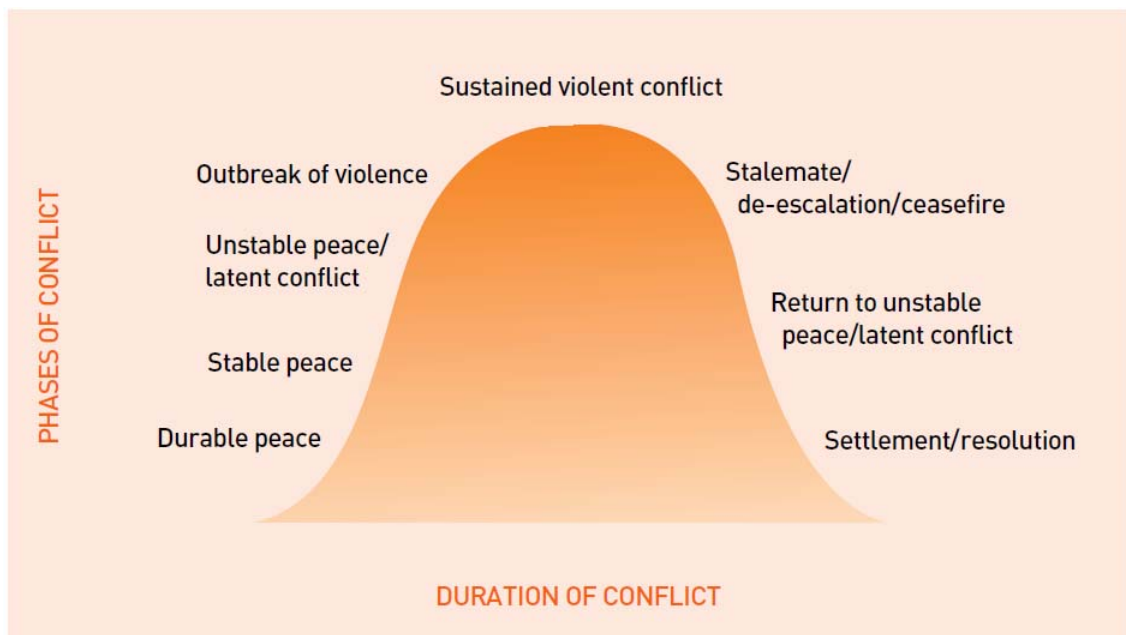
⁷⁷ Martha Rodríguez Achung. Gran Capital, monetarización y estratificación social en la Amazonía peruana. In: Clases Sociales en el Perú, visiones y trayectorias. Orlando Plaza Coordinador. Departamento de CCSS-CISEPA-PUCP, Lima, 2007.

FIGURE 16 - INTERRELATIONS BETWEEN PRIMARY STAKEHOLDERS



The conflicts change through time and can pass through clearly recognizable phases that could help the observer analyze the conflict, or a third party to judge the appropriate moment for an external initiative in the management of the conflict. (C. Mitchell, cited in the manual of readings Conf 501, 1998.)⁷⁸

FIGURE 17 - PHASES OF VIOLENT CONFLICT



Source: Rupesinghe, K. (1998) Civil Wars, Civil Peace: An Introduction to Conflict Resolution (London: Pluto Press).

⁷⁸ C. Mitchell, cited in the manual of readings Conf 501, 1998.

4.4.3 Key Elements in the Dynamics of Conflict:

a) Early warning sign:

Events or changes that facilitate the essential conditions for the manifestation of differences converted into problems.

For example:

- Changes in local, regional, or national power (i.e. groups in power that have different focuses and ideologies about the rules and norms with respect to foreign investments);
- Actions by the parties, such as aggressive or intolerant behavior (i.e. hostility in the presence of the company's staff, also negativity towards the presence of state representatives in the communities,);
- Directives (the passing of a law or rule in favor of a policy), etc;
- Negative perceptions formed by past experiences.

b) Precipitating Events:

- Those facts that make opposing differences come up to the surface (attitudes);
- The initial fact or incident is converted and the conflict evolves from a latent phase to a manifested phase (escalation of violence).

c) Positioning of the actors:

- The parties or one of them expresses antagonistic positions;
- The incompatibility of objectives between the parties is externalized;
- The response of one of the parties to specific actions and proposals of solutions by its counter party may be anticipated.

d) Birth, transformation, and proliferation of matters in the conflict:

- As violent attitudes are developed and exacerbated, generally affairs are modified, specific matters are generalized, simple matters are complicated, impersonal disagreements convert into personal matters, etc.

e) Polarization:

- With the end of achieving internal consistency and forming coalitions with eventual allies, while their leaders consolidate their leadership, the actors in conflict tend towards polarization.

f) Escalation and de-escalation spiral:

- The escalation is a process of action-reaction marked by increasingly violent acts;
- The de-escalation spirals are produced if the parties gradually and reciprocally reduce the hostilities and rigidity of their interactions.

⁷⁹ Ormachea Choque, I. *Resolución de conflictos ambientales: nueva perspectiva para el análisis y solución de conflictos*. Pp. 8-10. En: <http://icar.gmu.edu/Nueva%20Perspectiva.pdf> Reviewed on 08/31/2008

g) Stereotypes and mirror images:

- Determine if the parties possess “images of the enemy” or etiquettes that assume that one is the victim and the other the aggressor;
- Generally, each one of the parties perceives themselves with benign and exemplar characteristics, attaching to the opposite party a range of negative characteristics;
- This process stimulates rigidity in the positions, bad communication, and misunderstandings between the parties.

h) Other factors that impact the dynamics of the conflict:

There exist other factors that could be present in the analysis of the conflict:

- Internal factors: for example, changes within the make-up of the parties, changes in leadership, etc.
- External factors: for example, pressures placed by secondary actors, or political and economic occasions, etc.
- Third party intervention: through mechanisms such as mediation, conciliation, security forces, etc.

Direct violence / Structural violence

- Structural violence was a term introduced in the 1960s to direct attention to the way in which institutions and policies damage or destroy individual values and development. The absence of employment or a social role, the lack of opportunities for education and development, are examples of structural violence. Structural violence is probably the major source of crime and aggression in societies. (Burton, 1996, 43);
- We shall refer to the type of violence where there is an actor that commits the violence as personal or direct, and to violence where there is no such actor as structural or indirect. (...) [In structural violence] the violence is built into the structure and shows up as unequal power and consequently as unequal life chances. (Galtung, 1969, 170-71);
- Indirect violence = structural violence. Indirect violence comes from the social structure itself – between humans, between sets of humans (societies), and between sets of societies (alliances, regions). (...) The two major forms of structural violence are well known from politics and economics: repression and exploitation. (Galtung, 1996, 2);
- If people are starving when this is objectively avoidable, then violence is committed, regardless of whether there is a clear subject-action-object relation. Violence without this relation is structural, built into the structure. (Galtung, 1969, 171).

4.4.4 Scenes of escalation of the conflicts in the area of the project

- Existence of other economic agents with power in the area for whom the presence of the industry is dangerous (narcotics-traffic, violent groups, informal economic groups dedicated to the extraction of minerals and logging, etc.);
 - Non-fulfillment of agreements by either the company or the government;
 - Unsatisfied labor demands (increase in work quotas, a raise in the remuneration for local-indigenous personal that are working for the project;
 - It is expressed in the area, localized actions, although eventually it receives the support of international organizations.
- a) Opposition and demand in direct relation to the company:
- Existence of social and environmental liabilities previously produced by other companies;
 - Exacerbated by lack of or mistaken communication strategies about the project;
- b) The company as a medium to exercise pressure on other organisms (State).
- Demands for governmental policies (political, cultural, economic, territorial recognition);
 - The local communities are the base of national or regional organizations and esteem the use of force to counter state policies;
 - Ideological disputes and determined political occasions (elections for example);
 - At the regional and national level, the actions could take place in the area but be part of a strategy to pressure another level and face another speaker "the actions against the company are used to pressure others".

4.4.5 Process of Cooperative Management of the Conflict and Cultural Difference

It is extremely important to understand what the battling parties understand by conflict. This type of cultural knowledge is called "ethnoconflict theories"

"When the parties in conflict are from different cultures, or rather, when the conflict is intercultural, one can never be certain that they share the same understanding. Their respective notions about the cause of the conflict and the acceptable techniques to solve it can significantly differ between the parties."

"The first job of a mediator in intercultural conflicts is to analyze the different cultural dimensions, it is to say, to make a cultural analysis of the situation."

"The Resolution of Conflicts in Intercultural Frameworks: Problems and Perspectives, Kevin Avruch y Peter Black, ICAR-GMU"⁸⁰

⁸⁰ In: <http://icar.gmu.edu/intercultu.pdf> (reviewed on 09-18-2008)

a) Factors and Elements in Intercultural Dialogue

- **The social time:** time is a key cultural element and is treated differently by each group; it is important to consider that there exist differences between a company's logic and the logic of the communities and the indigenous peoples. The company has an "urgency" to initiate or finish their works, they move in function with established timetables, the communities tend to measure time differently, in general the rhythm is "slower" and their necessities are different from those of capital.
- **The language:** the company, their directors and personnel, handle a specialized technical language that is difficult to translate to the language of the population, who have a different way of understanding reality. There is no common language, one has to construct it. Often, despite good intentions, an understanding between the parties is not reached quickly.
- **Different world visions:** Implies also opposite values of the social, cultural, and environmental elements of space, and therefore different forms of knowledge.
- **Different kinds of knowledge:** all are legitimate: "The knowledge of here meets the knowledge of there".
- **The collective and the individual:** for indigenous peoples, the demands and their solutions are not individual themes but collective ones. The fundamental material base is a common good; the survival of the group is largely related to its social organization.

b) Key Elements for the Prevention of Conflict.

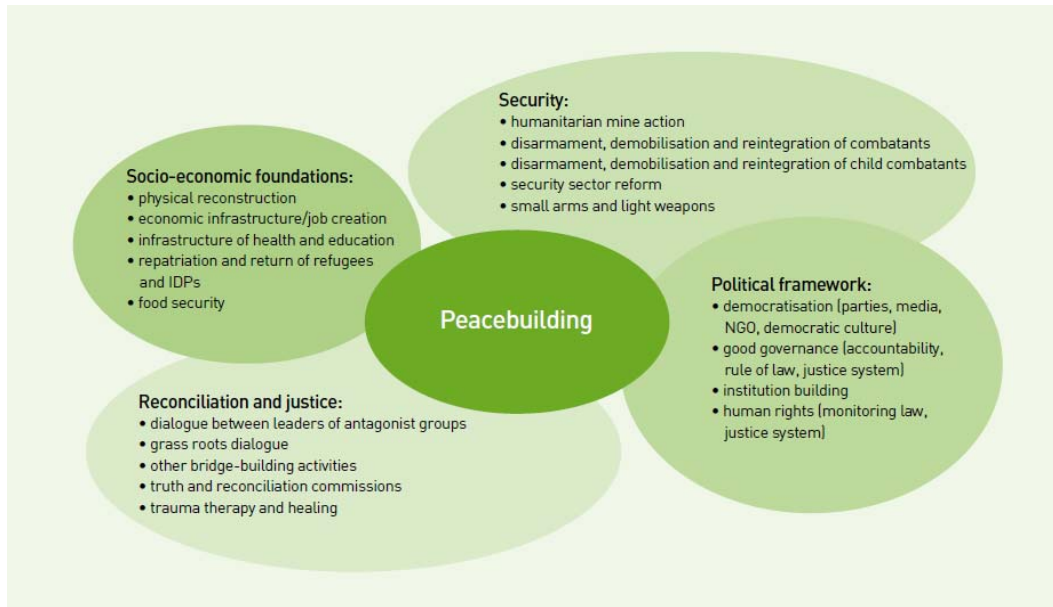
A policy, in the presence of conflict, requires a transformation of differences into constructive processes to arrive at satisfactory agreements between the objectives of the company and the needs of the local population. It is about:

- Recognizing the existence of indigenous peoples and rights;
- Accepting that the company "arrives" into an already inhabited place, into territories that have long been occupied by indigenous peoples;
- Recognizing that the base of the difference of interest is in the potential damage that the project could cause to the environment and resources which the local populations depend on to live;
- Accept the existence of differences and unsatisfied necessities;
- Reorient negative forces towards constructive actions that benefit and satisfy the parties, particularly those benefits that the project generates that translate into a higher quality of life for the local population;
- Redefine the relationship, initially based on a power disequilibria, improving it based on reciprocal respect facilitating the construction of material and culturally appropriate conditions for a negotiation in basic equal conditions (access to information, transparency, access to meeting places between the parties, culturally appropriate language, etc.);
- Create dialogue spaces and understandings of long-term duration based on confidence, respecting differences and systems of organization and representation of their own communities;
- Find the balance to arrive at just and long lasting agreements;

- Create participative mechanisms to monitor the fulfillment of the agreements.

The company can and should contribute to the construction of peace in the spaces where they execute their projects.

FIGURE 18 - DIMENSIONS ASSOCIATED WITH CONSTRUCTING THE STAGE FOR PEACE



Source: International Alert "Conflict-sensitive Business Practice Guidance for extractive industries. March 2006

Conceptual Framework

Prevention of the conflict:

Conflict Avoidance

- Any process operating to avoid the development of contentious issues and goal incompatibilities. (Mitchell, 1981, 257)

Conflict Prevention

- Any process that contributes to the prevention of undesirable conflict behavior once some situation of goal incompatibility has arisen. (Mitchell, 1981, 257);
- Conflict "prevention" refers to the means by which a situation is anticipated and dealt with by removing the possible causes of conflict, without giving up the threat of force;
- It could mean secession if parties sought this, far-reaching economic policies, or whatever combination of policies might be required to make conflict irrelevant. In this sense, prevention could be a political philosophy, a general approach to government. (Burton, 1996, 39).

Source: Conflict Analysis and Resolution. English/ Spanish Glossary. Barrueco, A., Régnier, B., Vejarano, B. (Eds.) 2001, p. 5. In: <http://icar.gmu.edu/glosarioespanolingles2.pdf> (reviewed 08/30/2008).

Problem Solving

- A creative, ideally joint process, in which parties seek mutually agreeable solutions.
- The term problem-solving is sometimes used to refer to analytical problem solving workshops that seek to analyze and resolve conflicts based on identifying and providing the underlying human needs. In other situations, it refers to an approach to mediation that focuses primarily on resolving the conflict (as opposed to transforming the relationships of the people involved).

Problem solving approach

- The problem solving approach to conflict involves working cooperatively with the other parties to solve a common problem. It can be contrasted with the adversarial approach, which views the other disputants as opponents or enemies to be defeated, not cooperated with.

Source: Conflict Analysis and Resolution. English/ Spanish Glossary. Barrueco, A., Régnier, B., Vejarano, B. (Eds.) 2001, p. 31. In: <http://icar.gmu.edu/glosarioespanolingles2.pdf> (reviewed 08/30/2008).

TABLE 8 - COMPANY INTERACTION/ CONFLICT WITH SUGGESTED MEANS OF MITIGATION

Conflict cause	Company/Conflict Interaction	Mitigating step
Unemployment is a source of conflict in the project area. While discriminatory laws have changed, employer prejudice remains intact and jobs tend to favor one group over another.	Recruitment could favor the privileged ethnic group, which tends to have higher levels of education and employment experience. This leads to escalation in inter-group rivalry and triggers reprisals against the company.	Core business: company develops affirmative-action recruitment policy and reconciliation-in-the-workplace programs that foster more positive inter-group relationships. Social investment: Company develops and funds long-term vocational training programs. Policy dialogue: Company engages with local government on economic diversification and equitable job-creation schemes.
State security forces commit human rights violations.	Company plans to hire private security firm, but also accepts state protection when a riot occurs locally. Either of these solutions could anger communities, and fuel conflict between them and the company or state.	Core business: Company ensures all private security staff's human rights records are screened; and trains them in human rights, including international human rights and humanitarian law and the Voluntary Principles on Security and Human Rights. Social investment: Company works with credible third party to develop training programs for state security forces; and sets up grievance procedures for the local community. Policy dialogue: Company maximizes opportunities for dialogue with government on human rights, including through cooperation with other companies. Also promotes corporate observation of human rights law at the international level.
Upcoming election a likely trigger for violence.	Company could be perceived as supporting particular parties, and be targeted by opponents. Workspace could become tense if politicized by staff or others campaigning on the premises.	Core business: Company strictly observes political party funding rules and does not allow premises, infrastructure or equipment to be used for campaigning purposes. Also conducts training for staff on meaning of 'free and fair' elections. Social investment: Company supports wider civic awareness

		training programs. Policy dialogue: Company works together with other companies to share information with election monitors on potential sources of violence; and, through dialogue, to encourage political elites to conduct their campaigns peacefully.
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Source: International Alert "Conflict-sensitive Business Practice Guidance for extractive industries. March 2006

IT IS AS IMPORTANT TO PREVENT, NEGOTIATE, AND ARRIVE AT SATISFACTORY AGREEMENTS AS IT IS TO FULFILL THE PROCESS AS SET FORTH IN THE AGREEMENTS

CHECK LIST

MANAGEMENT OF SOCIO-CULTURAL AND ENVIRONMENTAL CONFLICTS	
<i>The conflict is present in the relations between the company and the indigenous populations in that there exist a range of interests which are perceived as contradictory</i>	
Causes of the conflict	
The causes of the conflict are related:	
Are they related with an opposition or demand in direct relation with the company?	
Are they related with utilizing the company as a means to exercise pressure over other organisms?	
The Dynamics of the Conflict	
<i>Conflicts change across time and can pass through recognizable phases, which permit a better approach to the adequate management of the conflict.</i>	
Is the conflict found in the phase:	
• Stable peace?	
• Instable peace/Prevention/Latent conflict?	
• Crisis/ Outbreak of violence?	
• Sustained violence/Stagnation?	
• De-escalation/ Ceasefire?	
• Instable peace/ Rapprochement?	
• Peace Accords/Reconciliation?	
• Stable peace/ Agreement monitoring?	
Can some of the key elements be identified in the dynamics of the conflict?	
• Early warning signs?	
• Precipitating events, unraveling?	
• Repositioning of actors, stakeholders?	

<ul style="list-style-type: none"> • Proliferation and/or transformation of matters of conflict? 	
<ul style="list-style-type: none"> • Polarization of actors or arguments? 	
<ul style="list-style-type: none"> • Escalating or de-escalating spiral? 	
<ul style="list-style-type: none"> • Stereotypes and mirror images? 	
Cooperative Management of the Conflict	
Is the existence of the indigenous peoples and their rights recognized?	
Is it accepted that the company has entered a territory that has long been inhabited by indigenous peoples?	
Is it recognized that the base of the differences is rooted in the potential damage to the environment and the resources that the local communities depend upon?	
Is the existence of differences and unsatisfied necessities in the local population accepted?	
Is the relationship with the indigenous communities defined on the base of reciprocal respect?	
Have dialogue spaces and understandings based on confidence and respect for differences and the local representation systems been created?	
Are fair and long lasting agreements sought with the indigenous communities?	
Are participative mechanisms created to monitor the fulfillment of the agreements?	

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5.0 COMMUNICATION AND REPORT

“Communication is successful only when the message you sent reaches its target audience, and the target audience receives and understands the same message that you intended to communicate.”⁸¹

Communication is key for all relations; it is the base of interaction. It is necessary to consider two basic dimensions for a communication strategy.

- **Internal:** refers to the interior of a company; from the workers to the internal stakeholders. An internal communication strategy ensures the circulation of relevant information in all areas of the company, including those policy aspects, norms and codes of conduct related to Indigenous Peoples;
- **External:** it is related with the external stakeholders, in this particular case, with Indigenous Peoples. In this section exclusive reference will be made to this type of communication.

Considerations:

“What we say is not necessarily heard, what is heard is not necessarily understood, what is understood is not necessarily done, what is done is not necessarily repeated. Therefore if we realize this, we can find the most effective form of communication.”⁸²

- Communication with indigenous peoples is given principally through a process of previous and continuous consultation, and toward a strategy of searching for collaborative ways to manage differences and support sustainable development in the area;
- The communication strategy ought to form part of the participative process and the rights of the indigenous peoples to count on clear, transparent, and appropriate information with respect to their cultural objectives and the development of the company's project;
- Culturally appropriate forms of communication are important to ensure the participation of all the communities, their authorities, leaders and inhabitants;
- The company's communication system for this reason ought to be based on the recognition of the rights of indigenous peoples, and establish mass communication in their own language, with content that respects the knowledge, norms, traditions, and customs of the indigenous peoples. Furthermore, the company also can use the communication system to contribute to the valorization of the indigenous peoples' culture and resources.

⁸¹ The community forestry guidebook. Tools and techniques for communities in British Columbia. Jennifer Gunter, editor. 2004. Forest Research Extension Partnership and British Columbia Community Forest Association (p. 43).

⁸² Frits Hesselink, Wendy Goldstein, Peter Paul van Kempen, Tommy Garnett and Jinie Dela. (2007). Communication, Education and Public Awareness (CEPA) A toolkit for National Focal Points and NBSAP coordinators (Secretariat of the Convention on Biological Diversity and IUCN: Montreal, Canada)..

5.1 WHY THINK ABOUT COMMUNICATION?

One of the most important factors in the relationship between oil and gas companies and the indigenous communities is the capacity that they possess to communicate effectively with each other.

To establish this relationship, it is important that both parties (company and community) recognize that each possess their own culture. The challenge is to explore ways to adapt and fit the indigenous peoples' cultural practices and values to permit the establishment of a fluid and transparent communication channel between the company and the community that fosters good relations between the parties.

5.2 PRINCIPLES OF GOOD COMMUNICATION

*"Giving greater credence to indigenous methods of communication is only the first step towards enabling people to gain control over their information and exchange it with others on an equal basis."*⁸³

5.2.1 Culturally Appropriate Communication

For this, it is recommended to:

- Follow the formal mechanisms of the community for the reception of external information (identify the appropriate addressee);
- Know the indigenous communication channels;
- Prioritize the use of the indigenous peoples' language.

5.2.2 Consider the Indigenous Communication Channels

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Just as mass media and other communication channels are utilized by occidental society, the indigenous peoples possess their own communication channels related to their systems of authority. These channels evolve and constantly adapt to the conditions of existence of their own culture.

Through them information and knowledge circulate which is in turn preserved. Thus, it is necessary to know and understand how this can be an important key in achieving a better relationship.

⁸³ Mundy, P. y M. Lloyd-laney (1992). *Indigenous Communications*. Appropriate Technology Vol.19.N.2, pp.103-105.

⁸⁴ Mundy, P. y M. Lloyd-laney (1992). *op. cit.*

Mundy, P. y J.L. Compton (1991/3). *Indigenous communication and indigenous knowledge*. Development Communication. Report N. 74.

Why use Indigenous channels communications

The indigenous communication channels have their own value. These results can be an important aspect of the indigenous people's culture and is one of the means through which the said culture is preserved and transmitted. In this sense, it is a cultural aspect that ought to be respected as any other cultural aspect considered in international rules.

The external communication channels have a restricted reach. The radio, the television, newspapers have reached a certain degree of acceptance and penetration in many indigenous peoples. However, beyond the difficulties in accessing technology (particularly, newspapers, television, internet), some questions limit the utility of these channels: the language barrier, and "illiteracy" (with respect to the official language of the country) reduce the capacity of distributing these messages to a good part of the community. Instead, the indigenous communication channels (in many cases the radio is an important instrument) permit the dissemination of the information to all their strata of society.

The indigenous communication channels offer the opportunity to participate. These channels permit communication between members of the community and the representatives of the company. Thus, the conscious adoption of these channels favors the participation of all members, the control over the information and the means of distributing information facilitate the decision making process.

The indigenous communication channels possess credibility. Due to that they are familiar and are locally controlled.

The indigenous communication channels are important for gathering information. These information channels permit an exchange of information on equal terms. It is to say, in the same way that these channels benefit the distribution of information from the company to the community, the utilization of these mediums favor the circulation of messages in the other direction. That way the company has greater access to know the local reality and know the reactions about the determined project and/or feedback with respect to the actions of the company.

References (Translated and modified): Mundy, P. y M. Lloyd-laney (1992). Indigenous Communications. Appropriate Technology Vol.19.N.2, pp. 103-105. Mundy, P. y J.L. Compton (1991/3). Indigenous communication and indigenous knowledge. Development Communication Report N 74

In a general way, one can describe six types of channels and communication mechanisms that are utilized by indigenous peoples:

- **Folk media.** Is equivalent to mass media which is considered as exogenous, utilized as entertainment and to promote educational content, social values, cultural practices, and the transmission of indigenous knowledge. Includes: festivals, theater, songs, dances, story telling and poetry, among others. Each culture prioritizes determined ways in which this type of communication is carried out.
- **Indigenous Organizations.** Include, among others, assemblies and communal reunions, religious groups, associations for the management of resources (for example, irrigation systems, cultivating terraces, etc.) or production (associations and/ or networks of artisans, etc.). These organizations usually focus communication in formal reunions (for example, assemblies), through messages and work activities, but also offer an opportunity for more informal interaction.

These organizations could have been conceived internally, which is to say, created by the indigenous peoples. However, also, in many cases, they surge as an imposition by the state,

especially in questions related to political representation of the communities in the management of natural resources. In the latter case, a rejection can occur by the indigenous peoples, or rather that there is not a true feeling of ownership and responsibility (and thus participation).

- **Deliberate instructions.** This communication channel is found with equal frequency in indigenous peoples and in occidental society. The transmission of deliberate instruction is a part of the education process for children (through parents or other relatives) and adolescents (rites of initiation and/or passing, etc.). These forms of communication acquire great importance in transferring knowledge and technical abilities (artisan, agriculture production, livestock, etc.).
- **Records.** Societies tend to have diverse types of records through which knowledge and information endures from generation to generation through time, or rather, horizontally distributed. In particular, indigenous peoples maintain distinct forms of record keeping, according to each culture, such as: written, sculpture, etchings, and paintings. All these in diverse mediums (rock, types of paper, textiles, ceramics, etc.) and, with the exception of the written records, are characterized by being a visual communication. Among them, the record of memory is emphasised, which molds through verbal communication messages, history, traditions, etc.
- **Informal channels.** The major part of communication in a society (or in this case an indigenous people) is not structured or organized; it happens in an informal and spontaneous way. This type of communication can occur in any place and contain any type of information (including that of the technical kind) and although the majority happens between pairs and in function of kinship circles, it is certain that these informal networks of contacts are also very important.
- **Direct observation.** Communication does not have to be oral and/or written; information and messages are transmitted and decoded from the interpretation of gestures by each person. Generally indigenous peoples, through observing nature and a network of symbols, interpret messages of a religious or technical nature.

5.2.3 Offer Significant Information to the Communities

Offer all the relevant and pertinent information to the communities so they can make an informed decision. This contributes to the establishment of confidence and a real dialogue.

One should not part from the idea of "filtering" the information under the mistaken impression that the communities will not understand it because it is very technical or because it would not be of interest to the community. Such an attitude on the part of the company could be seen as a lack of transparency and arise as a complaint in the execution process of the project, bringing serious consequences in the deterioration of confidence between the parties.

5.2.4 Give Clear Messages, with Truthful and Standardized Information

*It is important that the company presents consistent arguments to interest groups. Distinct departments have different functions, objectives, and time periods that can mean challenges in trying to interact as a coherent team in front of the communities. If there does not exist a unified vision based on supporting the communities and in the interest of the company, the internal differences can contradict the purpose of each department and leave personnel frustrated and communities unsatisfied.*⁸⁵

Transparency is a key element in constructing and maintaining confidence. The company ought to be in conditions to provide details about policies, decision making, plans and programs; just as absolving doubts and questions planted by the communities, there should not only be an effort to provide information but also to make it comprehensible. It is important to pay attention not only to the public authorities but also to the uncertainties of other sectors of the community, in particular the women.

Lack of information can drive the propagation of misinformation with regard to the project which can damage the company's reputation, and furthermore undermine the efforts to participate in a dialogue with all interested parties.

When dealing with the implementation of agreements, which include financial elements, it is necessary that the company and the communal authorities agree about the rendition of accounts, access to forms and the record of the funds for all members of the community.

With relation to this point, it is very important to provide valid spokespersons, reference people for different matters (i.e. who are the responsible parties for the company with regard to community relations? The directors of the company should also be known by the community, they should not be aloof, far away, and inaccessible).

5.2.5 General Intercultural Communication Capacities

Generating capacities can be defined as strengthening the ability of the indigenous peoples to participate and make informed decisions about activities that affect their well-being.

In respect to communication with indigenous peoples, this makes reference to the potential need to facilitate *specific educational or training programs that are culturally appropriate* with the end of achieving the necessary understanding of the content of the communications.

But this is not about trying to convince them of what the company wants, nor changing their values or ways of seeing the world towards an occidental model and vice versa: it is about creating mechanisms and communication spaces that search for new points of reference and a common language, which is achieved "... through continuous dialogue and trans-cultural learning"⁸⁶

⁸⁵ Práctica Empresarial Sensible al Conflicto: guía para la industria extractiva Tema focal1: grupos de Interés (PP.7 versión en español).

⁸⁶ Recipe for dialogue project Guidebook. Resource/ extractive companies and Indigenous people engagement. Prepared by: Business for social responsibility & First people Worldwide, 2004, p. 54.

*"Informing a community means more than communicating your company's point of view. It means strengthening the capacity of the Indigenous community to understand the context of the information and the practical effects the project will have on their land, values, culture, and economy. Helping an indigenous community become fully capable partner with effective participation in decision-making can head off unpleasant surprises and smooth the collaboration process going forward."*⁸⁷

In this sense, it is necessary to identify the aspects that ought to be reinforced through education plans and capacitating, with the aim of being able to share information.

Here are some examples of information capacity building:

- To engage in effective dialogue, communities need to understand basic legal rights, including land rights and land tenure. If they have all the information they need before negotiations begin, it can reduce time that will be lost when communities insert information during or after the negotiations. Furthermore, certain negotiated agreements may become invalid if the community was not aware of its full rights.
- A clear understanding of the impacts and scope of the proposed operations is essential to any negotiation or engagement. Companies should provide a detailed description of the stages of the resource activity, including the estimated length of time, the amount of land affected, and the long-term impact on the land. And as stated earlier, this technical information will need to be conveyed in ways that are understandable to the Indigenous community.
- Companies should not take for granted what communities know. For example, they need to explain something as fundamental as the condition that the land will be in when the resource company gives it back; it will not be the same as when it was passed to the resource company. The company should also describe the potential social, economic, and environmental impacts of the proposed operations, as well as the mitigation strategies undertaken by the company in other areas.
- As the operation progresses, the community needs to become aware of the potential changes or adjustments made in operations, such as changes in shift schedules or the scope of operations, and their impact on the agreements that have already been established. This also helps the community understand how the industry functions, including such things as the effects of fluctuating oil and mineral prices and the impacts on local operations.

Source: Recipe for dialogue Project Guidebook Resource/ extractive companies and indigenous people engagement. Prepared by: Business for social responsibility & First people Worldwide, 2004, p. 55.

⁸⁷ Recipe for dialogue project: Guidebook. Resource/ extractive companies and Indigenous peoples engagement. Prepared by: Business for social responsibility & First peoples Worldwide, 2004 p. 56.

5.3 COMMUNICATION PLANNING

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The 10 steps for communication planning are:

1. Analysis of the issue and role of communication;
2. Selecting target groups/audiences and stakeholders;
3. Determining the communication targets;
4. Developing the strategy and selecting partners;
5. Determining the messages;
6. Selecting the communication means;
7. Organizing communication and brief partners;
8. Planning (in terms of milestones and activities);
9. Budgeting of activities;
10. Monitoring and evaluation.

5.4 FREQUENTLY MADE MISTAKES IN COMMUNICATION PLANNING

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a) No proper definition of objectives

- The objective of the communication activity is not properly defined or is too vague;
- The objectives are too ambitious to achieve;
- Communication experts are not involved in defining the objectives and planning the interventions, but are only tasked to communicate the plan or policy to the stakeholders with minimal or no budget;
- There is lack of knowledge of what is precisely wanted from the target groups and what is required to achieve the result:
 - e.g. Is knowledge needed? New skills and practices?
 - e.g. Do we need an attitude change from them?;
- Communication goals are set to change other people's behavior and values, without understanding how the behavior change can take place;
- The fact that people need social, economic or other benefits for any kind of behavior change is not considered when objectives are defined;
- Indicators are not defined for the communication targets/objectives, making evaluation of the outcome difficult.

⁸⁸ Frits Hesselink, Wendy Goldstein, Peter Paul van Kempen, Tommy Garnett and Jinie Dela. (2007). Communication, Education and Public Awareness (CEPA) A toolkit for National Focal Points and NBSAP coordinators (Secretariat of the Convention on Biological Diversity and IUCN: Montreal, Canada).

⁸⁹ Frits Hesselink, Wendy Goldstein, Peter Paul van Kempen, Tommy Garnett and Jinie Dela. (2007). Communication, Education and Public Awareness (CEPA) A toolkit for National Focal Points and NBSAP coordinators (Secretariat of the Convention on Biological Diversity and IUCN: Montreal, Canada).

b) Communication seen as purely transfer of information

- Overloading the audience with facts and information without understanding their level of understanding and needs.
- Thinking that information and facts are the best means to convince people to adopt a particular way of thinking.
- Not realizing that expert information is not always acceptable to the audience; that it may be too scientific or unappealing. The audience then decides that the information is not relevant for them.

5.5 COMING CLOSE TO COMMUNICATION: DISCLOSURE OR DIALOGUE

Although the process of coming close to communication responds in function to each particular situation, two specific communication models can be emphasized:

TABLE 9 - BASIC MODELS OF COMMUNICATION

	Vertical Model	Horizontal Model
Direction	Communication understood as a top down process	Communication understood as a two way street (two way model)
Receiver's Role	Passive	Active
Place focus in	Giving and disclosing a message	In a process: in the feedback, in dialogue, and in constructing meaning
Purpose	Informing and/or persuading	Involving and/or forming

Source: Taken and modified from: Frits Hesselink, Wendy Goldstein, Peter Paul van Kempen, Tommy Garnett and Jinie Dela. (2007). Communication, Education and Public Awareness (CEPA) A toolkit for National Focal Points and NBSAP coordinators (Secretariat of the Convention on Biological Diversity and IUCN: Montreal, Canada).

a) Communicate with whom?

Previous to the initiation, a communication plan should research the community's own cultural mechanisms in respect to:

- Who (role and specific person) acts as the interface with people from outside the community?;
- What are the appropriate mechanisms for the initial coming together?;
- How is information managed towards the interior of the community? Who administers and distributes it? Who is informed and who stays out of the loop (i.e. professions by sex, age groups, etc.).

b) What to communicate?

- From the initial phase of the project;
- Throughout the life cycle.

“Although the project-level analysis is undertaken at a relatively early stage in the project lifecycle, it is nevertheless a priority that communicating information about the project begins as soon as possible. The uncertainty that is often generated by the early exploration process has in the past been a source of tension between companies and communities. Building a social license to operate needs to begin at the earliest possible opportunity and starts by ensuring communities and other stakeholder groups feel they have some understanding and control of project design. Establishing information points in places and in ways that are accessible (and which don’t exclude particular groups or communities) is one step towards doing this. Working closely with stakeholders to convey information is another non-threatening way. ”

“Uncertainty over the nature of the project and unfamiliarity with industry practice and timeframes may engender unrealistic hopes of an immediate windfall. The information provided needs to address these expectations head-on. The short-term attractions of promising ‘jobs and schools’ can quickly become a problem for a company if those things fail to materialize (or themselves become sources of resentment). It may be useful to draw up a ‘promise record’ to record the various commitments made by project staff throughout the early exploration stages.”

Conflict-Sensitive Business Practice: Guidance for Extractive Industries, March 2005.

c) Means of Disclosure/ Communication

Beyond the formal or informal communication record, two principal means can be emphasized:

- **Interpersonal:** Implies direct contact between the parties and can present itself in diverse forms;
- **Media** (mass or not).

The interactions can be informal (discussions in small groups or with community leaders), formal (workshops, public assemblies, negotiations, work tables, etc.) or a combination of the two. Different strategies for the different interest groups have to be developed. For the groups most directly affected, the most appropriate meetings are face to face. Open attention to the public, forums, and public documentation respond to the needs of those who are less affected. The companies and the communities have their mutual implicit expectations. Making these expectations explicit permits both parties to become responsible to one another and have realistic expectations. When conflictive matters arise, it can be useful to have a formal communication protocol. This includes a list of who to contact, when, and through whom, by whom, etc.⁹⁰

⁹⁰ Práctica Empresarial Sensible al Conflicto: guía para la industria extractiva Tema focal1: grupos de Interés (p. 6, in spanish version)

TABLE 6 - EXAMPLES OF MEANS OF COMMUNICATION

Examples of Interpersonal Communication:	
<ul style="list-style-type: none"> • Dialogues, face to face conversations • Group Discussions • Conferences • Symposiums • Tours • House visits • Round Table • Exhibitions • Reunions • Workshops • Telephone Calls • Emailed information (questions and responses) • Internet debates 	
Advantages	
<ul style="list-style-type: none"> • Each situation is unique because there is an interaction • There is flexibility because during a dialogue or meeting you can change the tone of voice, the strategy, and the content of the communication and manage it towards a specific situation. 	
Examples of Mediums of Communication	
<ul style="list-style-type: none"> • Newspapers • Press Releases • Magazines • News Bulletin Board • Manuals • Brochures, fliers • Cards • Radio • Tapes • Television • Video • Posters • Billboard • Stickers • CDs • Web Pages 	
Disadvantages:	Advantages:
<ul style="list-style-type: none"> • The message is “fixed” • There is little flexibility to change once put in process 	<ul style="list-style-type: none"> • Can achieve large audiences • Uses the credibility of the media

Source: Frits Hesselink, Wendy Goldstein, Peter Paul van Kempen, Tommy Garnett and Jinie Dela. (2007). Communication, Education and Public Awareness (CEPA) A toolkit for National Focal Points and NBSAP coordinators (Secretariat of the Convention on Biological Diversity and IUCN: Montreal, Canada).

The companies can use the following instruments:

- Brochures, videos, audiovisual materials that explain the operating process in simple language with instructive illustrations;
- Signs and brochures that explain the offer and contract proceedings;
- A public information office in the most accessible place for the local population to facilitate easy access for all that they need and want to be able to increase their knowledge about the company's operations;
- Visits to all of the communities within the operating area and use of video and other media to demonstrate how the installations will look when they are complete;
- Meetings with the leaders of organizations in a special workshop that is called publicly. The bases ought to know when, where, with whom, and why the meeting takes place and also what themes will be handled, and if there were agreements made; they should be made known to the local communities;
- In the case of the closing of a project, a scale model of the appearance that the site will have after its closing, and, in fact, its environmental repairs.

ALL results of a formal meeting should be documented and its disclosure made possible.

ANNEX VIII - Consultation Methods and Instruments⁹¹

Consultation Method	Description and Justification
Member Meetings	<ul style="list-style-type: none"> • High visibility • Attendance subject to member availability and hard to predict • Large preparation load • Reaches statutory membership and achieves visible accountability • To be used sparingly
Open Houses	<ul style="list-style-type: none"> • High visibility • Attendance subject to member availability and hard to predict • Large preparation load • Displays and explains plans and products at key stages • Meets statutory requirements
Call For Written Briefs, Letters, or Responses	<ul style="list-style-type: none"> • Thoroughness of opportunity and documented record for input • Labor intensive to analyze the input • Can be open-ended or periodic in response to events
Focus Groups	<ul style="list-style-type: none"> • In-depth potential for member education and responses to specific issues at key points • Labor intensive
Advisory Committees	<ul style="list-style-type: none"> • Need careful tending and extensive support • Fixed membership; can be difficult to change • In-depth and knowledgeable advice over time • Potential for isolation • Continuous review of a longer process
Agenda Item at Constituency Meetings	<ul style="list-style-type: none"> • Convenient access to broad range of interest group members over time • Respects and acknowledges existing community structures
Kitchen – table visits	<ul style="list-style-type: none"> • High trust building • Accurate feedback • Labor intensive • Increases credibility of the project and consultation program
One-To-One Site Visits with Key Individuals	<ul style="list-style-type: none"> • Respect for positions indicated and therefore are taken seriously • Labor intensive • Provides understanding and means of working with advocates and critics
Telephone and Mail-Out Surveys	<ul style="list-style-type: none"> • Statistical treatment potential • Low return rates • Gives broad assessment of issues to refine through focus of other methods
Core Group of Stakeholders	<ul style="list-style-type: none"> • Uses core group of knowledgeable people as a “sounding board” to provide steering advice for an ongoing consultation • High trust building and trouble avoidance • Requires careful tending if created as a standing body
Workshops	<ul style="list-style-type: none"> • Flexible membership • Less opportunity than some other methods to inform people • Reasonable preparation load • Useful for periodic review of a longer process at important stages

⁹¹ Source: The community forestry guidebook. Tools and techniques for communities in British Columbia. Jennifer Gunter, editor. 2004. Forest Research Extension Partnership and British Columbia Community Forest Association (p. 46)

ANNEX IX - Rules Referring to Communication

Character	Rule/Standard	About Communication / Consult	About Communication / Disclosure Adapted to Cultural Forms	About the Right to Utilize and Preserve Language
International Rule	C 169 ILO		<p><i>Article 30</i></p> <p>1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labor, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.</p> <p>2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.</p>	
International Rule	UN Declaration			<p><i>Article 13</i></p> <p>1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.</p> <p>2. States shall take effective measures to ensure this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.</p> <p><i>Article 16</i></p> <p>1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.</p> <p>2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression,</p>

Character	Rule/Standard	About Communication / Consult	About Communication / Disclosure Adapted to Cultural Forms	About the Right to Utilize and Preserve Language
				should encourage privately-owned media to adequately reflect indigenous cultural diversity.
Voluntary Standard	World Bank Political Operative Operational Policy 4.10		<p><i>10. Consultation and Participation.</i> Where the project affects Indigenous Peoples, the borrower engages in free, prior, and informed consultation with them. To ensure such consultation, the borrower:</p> <p>(a) establishes an appropriate gender and intergenerationally inclusive framework that provides opportunities for consultation at each stage of project preparation and implementation among the borrower, the affected Indigenous Peoples' communities, the Indigenous Peoples Organizations (IPOs) if any, and other local civil society organizations (CSOs) identified by the affected Indigenous Peoples' communities;</p> <p>(b) uses consultation methods(*) appropriate to the social and cultural values of the affected Indigenous Peoples' communities and their local conditions and, in designing these methods, gives special attention to the concerns of Indigenous women, youth, and children and their access to development opportunities and benefits; and</p> <p>(c) provides the affected Indigenous Peoples' communities with all relevant information about the project (including an assessment of potential adverse effects of the project on the affected Indigenous Peoples' communities) in a culturally appropriate manner at each stage of project preparation and implementation.</p> <p>(*)Such consultation methods (including using indigenous languages, allowing time for consensus building, and selecting appropriate venues) facilitate the articulation by</p>	<p>4. For purposes of this policy, the term "Indigenous Peoples" is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:</p> <p>(a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;</p> <p>(b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories⁷</p> <p>(c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and</p> <p>(d) an indigenous language, often different from the official language of the country or region.</p>

Character	Rule/Standard	About Communication / Consult	About Communication / Disclosure Adapted to Cultural Forms	About the Right to Utilize and Preserve Language
			<p>Indigenous Peoples of their views and preferences. The Indigenous Peoples Guidebook (forthcoming) will provide good practice guidance on this and other matters.</p> <p>15. The borrower makes the social assessment report and draft IPP/IPPF available to the affected Indigenous Peoples' communities in an appropriate form, manner, and language (**). Before project appraisal, the borrower sends the social assessment and draft IPP/IPPF to the Bank for review. Once the Bank accepts the documents as providing an adequate basis for project appraisal, the Bank makes them available to the public in accordance with The World Bank Policy on Disclosure of Information, and the borrower makes them available to the affected Indigenous Peoples' communities in the same manner as the earlier draft documents.</p> <p>(**)The social assessment and IPP require wide dissemination among the affected Indigenous Peoples' communities using culturally appropriate methods and locations. In the case of an IPPF, the document is disseminated using IPOs at the appropriate national, regional, or local levels to reach Indigenous Peoples who are likely to be affected by the project. Where IPOs do not exist, the document may be disseminated using other CSOs as appropriate.</p>	
Voluntary Standard	Inter-American Development Bank Policy Operative about Indigenous People			IV. Policy Directives (d) <i>Support for indigenous culture, identity, language, traditional arts and techniques, cultural resources, and intellectual property</i> of indigenous peoples, including assistance to national governments and indigenous peoples in strengthening the corresponding legal frameworks.

CHECK LIST

COMMUNICATION AND REPORTS

One of the most important factors in relations between the company and the indigenous communities is the capacity that they possess to communicate in an effective way. The challenge is exploring the ways to adapt and fit the values and cultural practices of the indigenous peoples to permit the establishment of a fluid and transparent communication channel.

Dimensions in Communication

Has the company contemplated these dimensions of the communication?

- Internal communication
- External communication

Good Communication Principles

It is important to recognize both parties (company and community) possess their own culture, thus, the communication ought to be culturally appropriate.

Are the formal mechanisms of the community followed for the reception of external information?

Has the use of the predominant language among the indigenous communities been prioritized?

Is the information that is offered relevant and significant?

Are the messages clear and united?

Is specific training facilitated so the communities can achieve the necessary understanding of the communicational content?

Is the communication planned beforehand?

Is the communication planned from its initial phase and throughout the life cycle of the project?

To establish communication, have some of these communication channels been utilized?

Folk media

Records

Indigenous Organizations

Informal Channels

Deliberate Instructions

Direct Observation

Planning the Communication

For the communication to be effective, it ought to be planned, with anticipation, in function of the message, the addressee, and the desired effect.

In the first place, has one of these two models of communication been prioritized?

- Vertical Model (disclosure)
- Horizontal Model (dialogue)

Has the culturally appropriate addressee(s) been identified to establish communication?

--

Has the objective of communication been determined?

--

Mediums of Disclosure/ Communication

Has one of these general mediums been prioritized?

- Interpersonal
- Media (massive or not)

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ARPEL Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean

Established in 1965, ARPEL is an association of 26 oil and natural gas state owned and private companies and institutions with operations in Latin America and the Caribbean, which represent more than 90 percent of the Region's upstream and downstream operations. Since 1976, ARPEL holds formal UN-ECOSOC special consultative status. On 2006, ARPEL expressed its endorsement to the principles of the UN Global Compact.

ARPEL works on three main areas defined in its Strategic Plan:

- *Economic area:* relationship with key stakeholders, industry growth and energy integration.
- *Socio-environmental area:* Environment, Health and Safety Management System to prevent, eliminate and manage the operational risks, encouraging the reduction of incidents with high impact on facilities and individuals, and the relationship with communities where industry operates.
- *Eco-efficiency area:* the priority is focused on emissions reduction and the effective use of non-renewable resources.

To accomplish its objectives, ARPEL works together with its Members on issues of common interest to the industry through its 9 Committees. Four Corporate Committees: Environment, Health and Safety; Social Responsibility; Climate Change and Energy Efficiency and Energy Integration. Three Operational Committees: Refining, Pipelines and Terminals and Exploration and Production. Two Integrating Committees: Communications and the Integration Team, integrated by the Chairpersons of all Committees.

ARPEL organizes regional workshops, seminars and symposia to share information and best practices and develops technical documentation to build management capacity on issues of interest to its members. ARPEL has an interactive Portal for its Members in which all documents developed by ARPEL Technical Committees are available. The Portal facilitates the virtual interaction of the ARPEL community and with its stakeholders.

On 2005, on the occasion of the 40th Association anniversary, its members signed a binding Statement of Commitments in the areas of social responsibility, environment, health and safety, energy integration and communications to support sustainable development in the Region.



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