

**WCD Thematic Reviews
Social Issues I.2**

Sharing Power

**Dams, Indigenous Peoples
and Ethnic Minorities**

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Prepared for the World Commission on Dams (WCD) by:

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This report is one component of the World Commission on Dams knowledge base from which the WCD drew to finalize its report "Dams and Development-A New Framework for Decision Making". The knowledge base consists of seven case studies, two country studies, one briefing paper, seventeen thematic reviews of five sectors, a cross check survey of 125 dams, four regional consultations and nearly 1000 topic-related submissions. All the reports listed below, are available on CD-ROM or can be downloaded from www.dams.org

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- Grand Coulee Dam, Columbia River Basin, USA
- Tarbela Dam, Indus River Basin, Pakistan
- Aslantas Dam, Ceyhan River Basin, Turkey
- Kariba Dam, Zambezi River, Zambia/Zimbabwe
- Tucurui Dam, Tocantins River, Brazil
- Pak Mun Dam, Mun-Mekong River Basin, Thailand
- Glomma and Laagen Basin, Norway
- *Pilot Study of the Gariep and Van der Kloof dams- Orange River South Africa*

Country Studies

- India
- China

Briefing Paper

- Russia and NIS countries

Thematic Reviews

- | | |
|--|--|
| <ul style="list-style-type: none"> • TR I.1: Social Impact of Large Dams: Equity and Distributional Issues • TR I.2: Dams, Indigenous People and Vulnerable Ethnic Minorities • TR I.3: Displacement, Resettlement, Rehabilitation, Reparation and Development • TR II.1: Dams, Ecosystem Functions and Environmental Restoration • TR II.2: Dams and Global Change • TR III.1: Economic, Financial and Distributional Analysis • TR III.2: International Trends in Project Financing | <ul style="list-style-type: none"> • TR IV.1: Electricity Supply and Demand Management Options • TR IV.2: Irrigation Options • TR IV.3: Water Supply Options • TR IV.4: Flood Control and Management Options • TR IV.5: Operation, Monitoring and Decommissioning of Dams • TR V.1: Planning Approaches • TR V.2: Environmental and Social Assessment for Large Dams • TR V.3: River Basins – Institutional Frameworks and Management Options • TR V.4: Regulation, Compliance and Implementation • TR V.5: Participation, Negotiation and Conflict Management: Large Dam Projects |
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- **Regional Consultations – Hanoi, Colombo, Sao Paulo and Cairo**

- **Cross-check Survey of 125 dams**

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WHY WE DON'T WANT TO MOVE

This land is where we belong -- it is God's gift to us and has made us who we are. This land is where we are at home, we know its ways; and the things that happened here are known and remembered, so that the stories the old people told are still alive here.

This land is needed for those who come after -- we are becoming more and more than before, and we must start new settlements, with new farms around them. If we have to move, it is likely that there will be other people there and we shall not be free to spread out as we need to: and the land will not be enough for our people, so that we will grow poor.

This land is the place where we know where to find all that it provides for us -- food from hunting and fishing, and farms, buildings and tool materials, medicines. Also the spirits around us know us and are friendly and helpful.

This land keep us together within its mountains -- we come to understand that we are not just a few people or separate villages, but one people belonging to a homeland. If we had to move, we would be lost to those that remain in the other villages. This would be a sadness to us all, like the sadness of death. Those who moved would be strangers to the people and spirits and places where they are made to go.

The Akawaio Indians, Upper Mazaruni District, Guyana, 1977 ¹

As long as:

By Paulus Utsi (Saami)

As long as we have water, where fish swim
As long as we have lands, where reindeer graze and wander
As long as we have grounds, where wild animals hide
Then we have consolation on this earth.

When our homes have been destroyed and our lands devastated,
where will we live?
Our lands, our livelihoods have dwindled
The lakes have risen
The rivers have run dry
The streams sing with sorrowful voices
The lands blacken, verdure wilts
The birds become silent and flee.

All the good things we have received
Do not touch our hearts
What should have made our lives easier
Has become worthless.

Hard stone roads make
Our movements painful
The peace of the people of the wilderness
Cries in their hearts.

In the rush of time
Our blood is thinned
Our unison shattered
Waters cease to roar.

¹ Cited in Bennett, Butt-Colson and Wavell 1978:9

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1. Indigenous Peoples, Ethnic Minorities and National Development

1.1 Summary/Introduction

The objective of this paper is to assess the extent to which Indigenous Peoples and Ethnic Minorities have gained or lost from large dam projects.¹ Like many previous studies on the theme, it finds that indeed large dams have had very serious impacts on these peoples' lives, livelihoods, cultures and spiritual existence. Due to structural inequities, cultural dissonance, pervasive and institutional racism and discrimination, and political marginalisation, Indigenous Peoples and Ethnic Minorities have suffered disproportionately from the negative impacts of large dams, while often being among those who have been excluded from sharing the benefits.

On paper, measures to avoid or mitigate these negative impacts have been progressively improved over the past 50 years as international law and the policies of developers have been revised in response to growing voices of dissent. As this study shows, however, despite these advances and even where these policies are meant to apply, large dams continue to have serious, even devastating, effects on Indigenous Peoples and Ethnic Minorities. In large part this is because dam-building in particular, and development programmes in general, are driven by powerful interests and visions, which provide neither the incentives nor the time for developers to apply these new standards.

Encouragingly, substantial movement has already been achieved towards a consensus on 'Best Practice' options, including by leading hydro-power companies and multilateral development banks, which might lead to fundamental changes in the way future large dam-building schemes relate to Indigenous Peoples and Ethnic Minorities. In essence these changes reflect improvements in State recognition of the historical territorial rights of Indigenous Peoples and imply a reconsideration of the current doctrine of eminent domain – by which the properties of citizens can be expropriated in the 'national interest'. If, in future, dams could not be built without the free, prior and informed consent of affected peoples as expressed through their own representative institutions, much of the inherent inequity of dam-building today could be mitigated or removed and alternative development options would be given greater chance of proving themselves.

Indigenous Peoples, in particular, have long asserted the right to determine their own development, considering their right to accept or reject development proposals to be implicit in their inherent right to self-determination. The acceptance by national governments and the dam-building industry of the principle of free, prior and informed consent provides the main means by which the currently adversarial relationship between them and Indigenous Peoples and Ethnic Minorities could be transformed. Acceptance of the principle of free, prior and informed consent, would mean that, in future, dam-building would not go ahead without the affected communities being assured that they would benefit from the planned schemes and without them being first convinced that adequate mechanisms were in place to secure their development, compensation, resettlement and rehabilitation and their full involvement in legally enforceable monitoring procedures to ensure compliance.

1.2 Difficulties with Definitions

Neither Indigenous Peoples nor Ethnic Minorities are clearly defined in international law. At its broadest, the adjective indigenous is applied to any person, community or being that has inhabited a particular region or place for a long time. However, the term 'Indigenous Peoples' has gained currency, internationally, to refer more specifically to long-resident peoples, with strong customary ties to their lands, that are dominated by other elements of the national society. Although a number of Asian and African governments have sought to limit the definition of Indigenous Peoples to those peoples whose lands have been permanently settled by European colonists such as the 'Indians' of the Americas, the 'Aborigines' of Australia and the Maori of New Zealand, many peoples within Asian

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and African States define themselves as ‘indigenous’ and as distinctive from dominant national societies. They seek recognition of the same rights as those aspired to by the indigenous peoples of the Americas, Australia and New Zealand.

Despite resistance from some countries, the general trend at the United Nations has been to accept that many of the so-called ‘tribal peoples’ of Africa, Asia and the Pacific are indistinguishable from ‘Indigenous Peoples’ as far as international law and standards are concerned.²

Indigenous Peoples themselves insist on the principle of self-identification, which they see as an intrinsic part of their right to self-determination.³ The principle of the self-identification of groups is recognised in Article 8 of the Draft Declaration on the Rights of Indigenous Peoples, which is currently under discussion at the United Nations Human Rights Commission.⁴

The International Labour Organization’s Convention #169 applies to both Indigenous and Tribal Peoples and thus includes many such peoples from Asia and Africa. It ascribes both the same rights without discrimination. Article 1(2) of ILO Convention # 169 notes:

‘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.’

The concept of a ‘minority’ is a much broader and more encompassing one and has been popularly used to include any social group which distinguishes itself from the national majority, whether through nationality, religion, race, culture, language, caste or sexual orientation. It is however generally accepted that the term ‘minority’ refers not to numerical minorities within a nation State but to groups that suffer some degree of domination or discrimination by more powerful or numerous groups. In practice, the UN Human Rights Commission and its subsidiary bodies have addressed the concerns of minorities when they can show that they are culturally, religiously or linguistically distinctive from the dominant population, have some degree of group identity and have suffered evident abuse of their fundamental human rights based on policies or practices of discrimination.⁵

Many international lawyers agree with indigenous peoples that there is no need for an external definition of either the terms ‘indigenous peoples’ or ‘minorities’. They note that the very term ‘peoples’ which is fundamental to the constitution of the United Nations is itself undefined.⁶

1.3 Special characteristics of Indigenous Peoples

An alternative approach, that eschews definition, has been adopted by external agencies, that plan projects in Indigenous Peoples and Ethnic Minorities areas and have policies that make special provision for them, and which, therefore, need a mechanism for staff to identify where and when they should apply their policy. Rather than seeking to define Indigenous Peoples and Ethnic Minorities this approach sets out a number of ‘indicators’ which tend to be manifest by such peoples and can thus be used to help identify them. For example, for the purpose of its operations, the World Bank considers indigenous those peoples who manifest:

- vulnerability to being disadvantaged in the development process
- close attachment to ancestral territories and to natural resources in these areas
- self-identification and identification by others as members of a distinct group
- an indigenous language, often different from the national language
- presence of customary social and political institutions
- primarily subsistence-oriented production.⁷

Indigenous Peoples themselves emphasise that they differ from many other marginalised social groups in their relative lack of incorporation into the State or administrative apparatus. As Irene Daes, the Chairperson of the United Nations Working Group on Indigenous Populations, concludes:

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“In summary, the factors which modern international organisations and legal experts (including indigenous legal experts and members of the academic family) have considered relevant to understanding the concept of “indigenous” include:

- a) priority in time with respect the occupation and use of a specific territory;
- b) the voluntary perpetuation of cultural distinctiveness, which may include aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions;
- c) self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
- d) an experience of subjugation, exclusion or discrimination, whether or not these conditions persist.”⁸

1.4 Rights of Indigenous Peoples and Minorities under international law

In accordance with international law, members of Indigenous Peoples and Minorities enjoy all the fundamental human rights and freedoms of people everywhere. In addition, because of their distinct relation to States and the rule of law and because they suffer discrimination and are vulnerable to abuse, international law has also developed specific legal provisions to secure and protect their rights.

1.5 Rights to land and territories

Among the most important for the purpose of this study is the recognition of the rights of Indigenous Peoples to the ownership, control and management of their traditional territories, lands and resources. These rights were first set out in the International Labour Organisation’s Convention #107 on ‘Indigenous and Tribal Populations’, of 1957, and were later expanded on, in 1989, in a revised Conventions #169 on ‘Indigenous and Tribal Peoples’.⁹ Articles 14 and 15(1) of Convention #169 state:

▪ Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. 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.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

▪ Article 15

1. 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.

The ILO's Conventions broke new ground in that they established the principle that 'aboriginal title' derives from immemorial possession and does not depend on any act of the State. The term land is generic and includes the woods and waters upon it.¹⁰

The UN's Draft Declaration on the Rights of Indigenous Peoples provides even stronger recognition of Indigenous Peoples' territorial rights. Article 26 states:

'Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of their land, air waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of the laws, traditions and customs, land tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation or encroachment on these rights.'

1.6 Indigenous Peoples and Relocation

The ILO has also agreed special provisions regarding forced relocation. Under Article 12 of Convention 107, Indigenous and Tribal Populations cannot be relocated except according to national law for reasons of national security, economic development and their own health. If they are relocated 'as an exceptional measure', they shall be:

'provided with lands of quality equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development...Persons thus removed shall be fully compensated for any resulting loss or injury.'

Article 16 of Convention 169 sets out in greater detail but with additional qualifications, the conditions under which Indigenous and Tribal Peoples can be relocated from their lands:

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. 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 peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.
5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

The UN's Draft Declaration on the Rights of Indigenous Peoples provides stronger protections than either of the ILO Conventions. Article 7 prohibits any action which dispossesses Indigenous Peoples of their land, territories or resources and prohibits any form of population transfer which may violate or undermine their rights. Article 10 prohibits forcible removal from their lands and territories and insists that 'no relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation, and where possible, with the option of return.'

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Article 30 of the Draft Declaration acknowledges that:

'Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require the State to obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources particularly in connection with the development, utilization or exploitation of mineral, water or other resources....'

1.7 Rights of restitution

Many indigenous peoples have already suffered loss of their lands to development. While ILO Conventions #107 and #169 are mute on this issue, Article 27 of the Draft Declaration recognises that:

Indigenous Peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible they have the right to fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.

Similar recommendations have been made by the United Nations Committee on the Elimination of Racial Discrimination. At its 1235th meeting on 18 August 1997 the Committee noted:

‘The Committee especially calls upon States parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned and otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.’¹¹

1.8 Other key rights

A number of other rights of Indigenous Peoples are particularly relevant to this study. Notably, ILO Convention # 169 recognises the right of Indigenous Peoples to exercise their customary law, a right more fully affirmed in the UN's Draft Declaration. International law also makes clear how states and other institutions should interact with Indigenous Peoples. Article 6 (1) of Convention #169 notes:

In applying the provisions of this Convention, governments shall:

- a) 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;
- b) 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;
- c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

1.9 The right to self-determination

The existing ILO Conventions regarding indigenous peoples are unique in a number of respects, perhaps most importantly in their recognition of the **collective** rights of the indigenous **group** to own land and other resources, enter into negotiations and regulate the affairs of its members in line with customary laws. To a limited extent, therefore, Indigenous Peoples are already recognised by international law as autonomous seats of power within States.

Indigenous Peoples themselves go further. They assert their right to be recognised as peoples and, as peoples, to be accorded the right to self-determination, a right of all peoples affirmed in Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Whereas ILO Convention #169 is explicitly moot on this issue (Article 1.3), the right of Indigenous Peoples to self-determination is strongly upheld in the Draft Declaration on the Rights of Indigenous Peoples, which has already been endorsed by the UN's Sub-Commission on the Prevention of Discrimination and the Protection of Minorities and is now being reviewed by the Human Rights Commission.

In the meantime, the United Nations Human Rights Committee (HRC) appears to have already accepted that Indigenous Peoples do enjoy the right to self-determination. In its recent commentaries on Canada's compliance with its obligations under the International Covenant on Civil and Political Rights and the rights of Canada's 'Aboriginal Peoples', the HRC notes:

*'the Committee emphasizes that the right of self-determination requires, inter alia, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (Article 1(2)). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP [Royal Commission on Aboriginal Peoples] recommendations on land and resources. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with Article 1 of the Covenant.'*¹²

Historically, European nations did not hesitate to recognise the rights of Indigenous Peoples in the regions that they were 'discovering' to act as sovereign nations, hold territory, own land, exercise their customary law and maintain their own forms of government. Indeed they often based their claims to indigenous territories on their conquest of, or alliance with, Indigenous Peoples.¹³ Accordingly treaties were often signed with Indigenous Peoples as binding agreements between sovereign powers.¹⁴

The question of Indigenous Peoples and corresponding rights is likely to continue as a major item of discussion at the United Nations for some years.¹⁵ For the purposes of this study what is important is to recognise that one of the key reasons that Indigenous Peoples identify themselves as such is because they assert this right to self-determination. By virtue of this right they seek to renegotiate their relations with the States in which they now find themselves in order to achieve greater autonomy in their social, cultural, economic and political development. At the minimum what they are seeking is the right to control their territories and to ensure that no developments should be imposed without their free and informed consent as expressed through their own representative institutions.

1.10 Rights of Minorities

By contrast with Indigenous Peoples, minorities enjoy far fewer special rights under international law. Whereas the duty of States to protect minorities was one of the organising principles of the League of Nations in the first part of the 20th century, since the second World War international law has been constructed around the interdependent concepts of the rights of peoples and the rights of individuals within nation states.¹⁶

Accordingly, international law has been very hesitant in recognising the rights of collectivities within existing States. Minority rights key around Article 27 of the International Covenant on Civil and Political Rights, which states that:

'In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.'

The language is very cautious. As it stands, international law does not recognise the group rights of minorities but only affirms the individual rights of members of minorities. The European Convention on Human Rights is no more explicit and only applies to individuals and does not guarantee substantive minority rights at all. Even these special provisions are too much for some States. The French Republic, for example, has made a formal declaration with respect to the International Covenant of Civil and Political Rights that 'Article 27 is not applicable so far as the Republic is concerned'.¹⁷

In framing legislation about minorities, Governments have been careful to avoid ascribing rights to minorities that might encourage racist or segregationist policies. Thus, the International Convention on the Elimination of All Forms of Discrimination only affirms the acceptability of positive discrimination in favour of disadvantaged groups so long as '*such measures do not as a consequence lead to the maintenance of separate rights for different racial groups*' (Article 1, para 4).

In sum, existing international law accepts that minorities have rights to maintain their religions, languages and cultures and to be accorded protections and provisions by the State to ensure that they are not discriminated against. These provisions should ensure that they enjoy rights to their property equal with other citizens as well as protection of their other fundamental rights and freedoms.

1.11 Other relevant international standards:

The Convention on Biological Diversity also makes provisions relevant to Indigenous Peoples and any minorities who consider that they 'embody traditional lifestyles'. Article 8(j) obliges States 'as far as possible and as appropriate':

'Subject to its national legislation, [to] respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological resources...'

Similarly, Article 10(c) obliges States, 'as far as possible and as appropriate to:

'...protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.'

The full implications of these provisions have yet to be determined. An intersessional working group under the Conference of Parties of the Convention is to look into the matter further in early 2000.¹⁸

The World Bank has a number of specific policies relevant to this study including policies on Indigenous Peoples, environment assessment, involuntary resettlement and cultural property. The World Bank's policy on Indigenous Peoples, which can be interpreted as applying equally to many so-called Ethnic Minorities, is designed to ensure that indigenous concerns are addressed prior to project implementation. The policy is designed to ensure that:

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- there is a clear borrower government commitment to adhere to the World Bank's policy
- acceptable mechanisms are in place to ensure indigenous participation in the full project cycle
- a special project component is developed which:
 - makes an assessment of the national legal framework regarding Indigenous Peoples
 - provides baseline data about the Indigenous Peoples to be affected
 - establishes a mechanism for the legal recognition of Indigenous Peoples' rights, especially tenure rights
 - includes sub-components in health care, education, legal assistance and institution building
 - provides for capacity-building of the government agency dealing with Indigenous Peoples
 - establishes a clear schedule for fitting actions related to Indigenous Peoples into the overall project, with a clear and adequate budget
- final contracts and disbursements are conditional on government compliance with these measures.¹⁹

Recently, too, the European Union has adopted a policy resolution on Indigenous Peoples and Development which recognises that 'indigenous peoples have the right to choose their own development paths, which includes the right to object to projects, in particular in their traditional areas'.²⁰

International agencies working in other sectors such as forestry and conservation have also begun to recognise Indigenous Peoples' rights to the use, ownership and control of their lands and territories. The International Tropical Timber Organisation's Guidelines for Natural Forest Management accept ILO and World Bank standards towards Indigenous Peoples. Similarly, recognition of indigenous tenure and participation is also enjoined by the Intergovernmental Panel on Forests. Principles and criteria #2 and #3 of the Forest Stewardship Council for voluntary certification are explicit on the need to recognise and legally establish Indigenous Peoples' legal and customary rights to land and insist that no forestry projects should go ahead on their lands without the people's consent. The World Conservation Union's (IUCN) new protected area categories accept Indigenous Peoples as owners and managers of Protected Areas. New IUCN and WWF policies endorse the UN Draft Declaration on the Rights of Indigenous Peoples, recognise their rights to own, control and manage their territories, and accept the principle that conservation initiatives should only go ahead in indigenous areas with the free and informed consent of the traditional owners. The World Commission on Protected Areas has also just adopted guidelines for implementing these principles. Since the 1992 United Nations Conference on Environment and Development (UNCED), there has been an intergovernmental consensus that Indigenous Peoples should be involved in policy making and they have been accepted as a 'Major Group' that should be involved in implementation of Agenda 21.²¹

1.12 National policies towards Indigenous Peoples and Ethnic Minorities

At the national level the diversity in the way government agencies relate to Indigenous Peoples and Ethnic Minorities is very great. As noted in Section 7 below, some countries have signed or inherited treaties with the Indigenous Peoples who now fall within their national territories. These treaties, which are interpreted in international law as international agreements, may accord these Indigenous Peoples clearly defined rights and provide them with an important measure of self-governance.²²

In addition to such international arrangements, many governments have adopted explicit or implicit policies towards Indigenous Peoples and Ethnic Minorities Policies which range from those which try to ignore or overcome ethnic differences and encourage the rapid assimilation of ethnic groups into the mainstream to those which purposefully try to maintain their distinctiveness. Both extremes are associated with human rights abuse. Assimilationist policies that deny ethnic differences and the right

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to maintain cultural traditions, while contrary to the international laws noted above, remain all too common, the situation of the Kurds in Turkey being one of the most obvious examples.²³ At the other extreme enforced segregation, expressed through policies of *apartheid* and ‘ethnic cleansing’, are considered to be ‘crimes against humanity’ and have been widely condemned.²⁴

▪ **Integration:**

Most States seek to implement intermediate policies between these two extremes. A policy of integration was actively promoted by the International Labour Organisation in the 1950s. The underlying belief was that peoples’ traditional practices were obstacles to the improvement of their conditions of life and employment and the need was to institute temporary protections of indigenous and tribal peoples’ rights while encouraging their gradual integration into the national majority. Integrationist policies are still actively implemented in much of Sub-Saharan Africa and Asia and are considered crucial for nation-building and for overcoming ‘tribalism’.²⁵

▪ **Pluralism:**

In contrast, the second half of the 20th century has seen a growing recognition of peoples’ rights to maintain their ethnic identity as something to be cherished and respected. The International Labour Organisation’s revised Convention #169 thus recognises in its preamble:

‘the aspiration of these peoples to exercise control of their own institutions, ways of life and economic development and maintain and develop their identities, languages and religions, within the framework of the States in which they live.’

In Latin America in particular, a number of countries have revised their constitutions so that they explicitly recognise their multi-cultural and pluri-ethnic character.²⁶ Measures have been instituted accordingly to encourage bilingual and intercultural education, recognise indigenous territories, institute local self-governance and create autonomous provinces. Likewise in India a constitutional amendment has been passed recognising tribal self-rule.²⁷ Pluralist policies come closest to meeting the expressed demands of many minorities and most indigenous peoples. They provide some scope for self-definition and a measure of self-determination, allowing the peoples themselves to choose their development path.

An encouraging finding of the WCD joint consultation on ‘Dams, Indigenous Peoples and Ethnic Minorities’ held in Geneva in July 1999 was the realisation that, with the exception of Malaysia and Namibia, the others of the seven countries from which case studies were drawn had moved away from out-dated integrationist approaches. Canada, Guatemala, Chile, Norway and the Philippines, have now adopted policies which can be broadly grouped together as ‘pluralist’, providing much greater scope for self-governance and the protection of distinctive identities and rights (see Table 1.1).

Table 1.1:²⁸ SOME NATIONAL POLICIES ON IPs and Ems

	Other	Assimilation	Integration	Pluralism
Norway		Pre-1950s		Post-1970s
Canada		Pre-1960s		Post-1980s
Guatemala	1980s(genocide)			1990s
Malaysia			1990s	
Philippines		Historical	1960s	1990s
Chile		1980s		1990s
Namibia	Historical(isolation)		1990s	

Finally, a number of European countries have adopted policies on Indigenous Peoples to guide the activities of their development assistance agencies, including inter alia Germany, Belgium, Austria, Netherlands, Norway and Denmark.

1.13 Processes of Participation: from consultation to negotiation, control and consent

The United Nations Research Institute on Social Development defines participation as:

'...organized efforts to increase control over resources and regulative institutions in given social situations, on the part of groups and movements of those hitherto excluded from such control'.²⁹

Since the mid-1980s, participation has become a key word in development discourse. The Rio agreements consolidated global acceptance that 'sustainable development' required the effective participation of local communities in decision-making and most development agencies have elaborated policies to promote the involvement of civil society in one form or another in project planning and implementation.

Notwithstanding this consensus, practices of participation vary widely. As one analyst notes "repeated and token use of the terminology has devalued it; participation has come to mean so many things that it sometimes means nothing...".³⁰ Participatory approaches range from token consultation with those likely to be affected by development decisions, through hasty data gathering techniques, such as rapid rural appraisal, to more participatory appraisal methods, and finally to much more inclusive participatory processes which involve locally-affected groups not just in planning, but also in negotiation, implementation, management, monitoring and evaluation.³¹ Full participation implies that the local communities actually have control of development processes and resources and can veto development options that do not suit their interests and thus implies negotiated settlements, in which they are able to secure outcomes that are acceptable to them.³² Obstacles to effective participation inhere not only in the procedures and prejudices of developers and government agents, but in the legal situation of the peoples concerned. Indigenous Peoples and Ethnic Minorities are especially at risk from ineffective participation procedures due to the lack of recognition of their rights, notably to land and natural resources, and due to the prejudice and cultural gulf between them and 'decision-makers'.

It is beyond the scope of this study to provide a full review of the challenges to effective participation and negotiation. Development agencies such as the World Bank and other multilateral development banks have elaborated detailed procedures aimed at ensuring that so-called 'project beneficiaries' are involved in proposed projects.³³ NGO reviews of the application and performance of these procedures emphasise that particular attention should be given to the following:

- a long lead in time to ensure effective communications and planning
- timely and full access to project related documents in the right languages and in forms intelligible to the peoples concerned
- workshops and public meetings to discuss findings, proposals and plans
- open review of alternatives
- openness to the 'no project' option
- adequate resources to allow effective participation, including funds for institution- and capacity-building
- clear and legally enforceable contracts between Indigenous Peoples, borrower governments and the Banks
- effective participation of Indigenous Peoples in monitoring and mid-term evaluations

- easily accessible and simple complaints procedures and effective systems for the redress of grievances.³⁴

Indigenous Peoples also emphasise the deficiencies of rapid rural appraisal techniques, which are often too hasty and ill-prepared to bridge the social and cultural divides between consultants and affected peoples. They are likewise sceptical of the current enthusiasm for ‘multi-stakeholder’ approaches which pretend an equality between participants in meetings, without taking into account the prevailing inequities such as lack of recognition of rights, differences in language and education, divergent traditions of expression and existing prejudices among participants. Indigenous Peoples also emphasise that the ‘stakeholder’ approach presumes an equality in ‘stakes’ where there is none. ‘We are not ‘stakeholders’ but ‘rightsholders’ has been a common assertion by Indigenous Peoples in such meetings.

The tendency of development agencies to use NGOs and anthropologists as intermediaries in project planning has also caused many problems and misunderstandings. NGOs and social scientists may be welcomed by Indigenous Peoples and Ethnic Minorities where they support them in their discussions and negotiations with developers but they should not be allowed to substitute their voice for that of the people concerned.

1.14 Eminent domain and Indigenous Resistance

‘I am most unhappy that development projects displace tribal people from their habitat, especially as project authorities do not always take care to properly rehabilitate the affected population. But sometimes there is no alternative and we have to go ahead in the larger interest’

Indira Gandhi³⁵

Central to the disputes between Indigenous Peoples, Ethnic Minorities and Governments over imposed development projects, is the question of whose will should prevail in the absence of consensus or mechanisms for further negotiation. Through exercise of the principle of eminent domain, many States grant themselves the power to override local objections and expropriate private property in the national interest. Such powers are usually regulated by enabling laws, such as Land Acquisition Acts, which set out the official processes of land acquisition and establish procedures for the due compensation of landowners.³⁶

Social justice organisations have long questioned the methodologies by which planners assure themselves that the ‘national interest’ is indeed being served by a project. For example, in 1989, India’s voluntary sector ‘National Working Group on Displacement’ noted:

*‘The official declaration of ‘national purpose’ can no longer be taken as self-evident. It should become a subject of open public debate and holistic appraisal. Such appraisal can no longer be a techno-managerial exercise limited to establishing positive benefit-cost ratios. Factors like distributive justice, the right to live with human dignity, the right to adequate livelihood and resource base, sustainability etc., have to be brought to bear on each project to decide on its desirability and justifiability.’*³⁷

Other activists also query whether the State’s right of eminent domain, which allows the expropriation of private property in the public interest, also gives the State the right to violate other fundamental rights and freedoms, including in particular the right to practise one’s own religion, which in the case of Indigenous Peoples may be intimately bound to the land. The right to freedom of belief is enshrined in international law and is incorporated into the constitutions of many countries. Indigenous peoples claim that the flooding of their lands, which are sacred to them and underpin their cosmologies, constitutes a violation of this right which should override the principle of eminent domain.

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In any case,, many Indigenous Peoples and some Minorities question whether the principle of eminent domain can legally be extended over their territories at all, on the grounds that they are themselves sovereign peoples with the right to self-determination. Some countries come close to accepting that Indigenous Peoples, by virtue of their residence in their territories prior to the creation or extension of the nation state, do have both prior rights to their lands and natural resources and the right to self-governance, including the right to veto proposed developments on their lands.

In the USA, legislation on this issue has been through a long and contentious evolution. Since the formation of the Union, the United States has recognised Native Americans as ‘domestic dependent nations’ and deals with them on a ‘government-to-government’ basis.³⁸ However, the sovereign rights of Native Americans over their lands and resources are qualified in a number of ways. As the Tuscarora Indians discovered in their dispute over the Niagara Power Project, under US law Indigenous Peoples who have acquired full property rights to their lands, in line with normal land titling procedures, are subject to expropriation ‘in the national interest’ like other US citizens. However, those Indians who have signed treaties with the USA or prior colonial powers and/or have been resettled on officially recognised reservations are more securely protected, at least in law, from expropriation. Reservation lands, which are owned by the United States government and held in trust for the benefit of Indian nations, cannot be used for a purpose *“inconsistent with the purpose for which such reservation was created or acquired”*. Likewise, transfer of reservation lands from the Indians cannot be made except *“by a treaty or convention entered into pursuant to the Constitution”*.³⁹

During the late 19th century the US courts disputed whether Indian reservation rights extended to include their rights to water, a matter that was settled in the Indians’ favour in a historic case in the US Supreme Court in 1908.⁴⁰ The case established the so-called ‘*Winters Doctrine*’ which, in effect, ‘reserved the Indians’ rights to water’ giving them priority over non-Indians. The Federal Government subsequently abused this power and used it to impose national water policies on member States of the Union during the middle years of this century, while making minimum provisions for affected Indians. However, since the 1970s, improved processes of public participation and indigenous mobilisation have established both the *de jure* and *de facto* right of reservation Indians to veto water projects on their lands.⁴¹ Just such developments allowed the Yavapai people to reject the establishment of the Orme dam on the Colorado River which would have flooded them off the Fort MacDowell reservation, although it took them 30 years of persistent pressure before the Federal Government acceded to their rejection of the dam.⁴² Notwithstanding these protections, the US Congress reserves for itself ‘plenary power’ which gives it full legislative jurisdiction over Indians and Indian lands irrespective of their residual sovereignty and is unlimited and beyond judicial review.⁴³

Canadian law relating to Indigenous Peoples is very complex. Indigenous rights are governed by a series of instruments, including the 1867 Indian Act (as amended) and Sec. 35 of the 1982 Constitution Act, which protects ‘existing aboriginal rights’ and historic and modern treaties, the latter being negotiated and constitutionally protected land claims and self-government agreements. In the case of modern treaties, the rights of any one Indigenous Peoples depend on the specific self-government agreements and land claims settlements reached between them and the state. As a general rule eminent domain doctrines may be applied to native lands, including reserve lands, under the Indian Act, provided the Crown complies with its fiduciary/trust obligations.⁴⁴ The Cree and Inuit in the James Bay project area were in the somewhat unusual situation of not having signed any treaty with either Canada, the province of Quebec or the French colonial powers. Their aboriginal sovereign rights as First Nations to their lands thus remained un-extinguished when Hydro-Quebec and the Governments of Quebec and Canada began in the early 1970s, without Cree consent and against their express wishes, to construct the La Grande hydro-electric mega project. This situation endured until the Cree negotiated the James Bay agreement

This controversy over the James Bay development projects in Quebec helped clarify the way Aboriginal rights relate to the sovereign powers of the State. In the 1960s, as Hydro-Quebec noted in its submission to the WCD meeting in Geneva, in line with their then current assimilationist policies, Canadian “Governments thought that Indian rights, Indian status and treaties were things of the past”.⁴⁵ Accordingly, when the James Bay hydro-electric development project was first announced in 1971, no provisions were made to deal with the Indigenous Peoples’ claims. Intense litigation followed and drew on an historical judgement handed down in the Supreme Court in 1973 recognising the continued existence of Aboriginal land rights if they had not been extinguished by the Crown.⁴⁶ Since the Cree and Inuit peoples were in this situation of not having surrendered their rights they were able, in August 1973, to obtain an injunction from the Quebec Superior Court ordering a halt to the James Bay hydro-electric project. The court agreed that the Province could not ‘...develop of otherwise open up these lands for settlement without... the prior agreement of the Indians and Eskimo’.

Construction of the project was already well under way, however, and the Cree state that it did not halt even in the face of the court injunction. Although the injunction was later overturned by a higher court, turning the Cree once again into ‘squatters’ on their own lands, it and the 1973 judgement provided the basis on which the Cree and Inuit were able to negotiate a compromise with the Provincial and Federal authorities agreeing, the Cree argue under duress⁴⁷, to the surrender their rights in exchange for compensation and legally enforceable agreements as part of any development of their lands.⁴⁸ A recent decision by the Supreme Court of Canada has now ruled that negotiation shall be the way to resolve legal disputes between Aboriginal rights and development.⁴⁹

These advances in Canadian law should not obscure the fact that disputes between the Canadian government and Indigenous Peoples over hydro-power projects remain very acrimonious. One unresolved case concerns the second stage development on the Churchill river, the so-called Gull Island power complex, which is being developed by a consortium comprised of Newfoundland and Labrador Hydro (65.8%) and Hydro-Quebec (34.2%), which is responsible for the design of the project and will purchase most of the electricity generated. The massive 3,200 MW project, which overlaps Quebec and Newfoundland, comprises two dams and two river diversions and will flood a large area of the hunting territory of the Innu people who live both sides of the provincial boundary. The whole area is the subject of an unresolved land claim by the Innu people, currently being negotiated with the Canadian government. According to the human rights organisation, Survival International, the authorities in Quebec and Newfoundland stubbornly refused to consult the Innu before signing a pact in March 1998 intended to open the way for the construction of the project [in March 1998], a position they have been forced to go back on due to indigenous protests. Daniel Ashini, chief negotiator for the Labrador Innu has insisted that ‘this project can only proceed with Innu consent’.⁵⁰ Explaining the apparent discrepancy between the treatment of the Cree and Inuit in James Bay since the mid-1970s and the current treatment of the Innu, James Wilson of Survival International notes that ‘Canada has proved very poor at first recognising the inherent rights of Indigenous Peoples.’ The Innu have yet to be clearly recognised as the owners of their lands and are reluctant to surrender their rights, as the Cree and Inuit were obliged to do.⁵¹

In this regard, the United Nations Human Rights Committee and the U.N. Committee on Economic, Social and Cultural Rights have declared (in the context of their respective April 1999 and December 1998 judgements of Canada’s compliance with its international human rights obligations under ICCPR and ICESCR) that the extinguishment, conversion or giving up of Aboriginal or treaty rights is incompatible with the International Bill of Rights. Noting the connection between policies and practices of land and resource dispossession and the economic marginalization of Aboriginal peoples in Canada, the two Committees declared that Aboriginal issues are the most pressing human rights question facing Canadians and called on the government of Canada to abandon all extinguishment policies.

Somewhat as in Canada, in Australia, the legal situation is complicated by the diversity of regional legislations. Aboriginal peoples in the Northern Territory enjoy relatively strong protection under the Aboriginal Land Rights (Northern Territory) Act of 1976. Aboriginal lands in the territory are managed by Land Councils, which act subject to the consensus of the traditional land-owners. They enjoy what is effectively a right of veto on development proposals and although technically the Federal authorities can override this in the national interest, this power has never been exercised. Aboriginal sacred sites may also be protected nationally by the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, which allows the Commonwealth Minister for Aboriginal Affairs to protect such sites. This may prevent sacred sites being flooded, overriding national interest arguments. A case in point was the proposed Todd River dam near Alice Springs, which would have flooded an important Aboriginal women's site, but which was halted when the site gained protection under the Act. There are also (mostly lesser) levels of protection under State and Territory laws. Australian law has now, belatedly, recognised 'native title' as deriving from immemorial possession, continuing occupation and the exercise of customary law. Although 'native titles' are not entirely exempt from expropriation, Aboriginal land-owners have a right to negotiate, followed, in the absence of agreement, by a tribunal determination which, however, may be overridden on the basis of national interest.⁵² By contrast, in Papua New Guinea, where 98% of the national territory is recognised as belonging to traditional land-owners, the State retains its power to expropriate in the national interest, subject to the usual provisions of due acquisition and 'just' compensation.⁵³ In New Zealand, however, Maori land rights are guaranteed by the Treaty of Waitangi and thus offer the Maori stronger protection against expropriation without consent.⁵⁴

In India, this issue is likely to be contested in the courts in the near future. In 1996, the Indian Constitutional provision granting autonomy to villages was extended under the Panchayats (Extension to Scheduled Areas) Act to recognise self-rule at the level of the *panchayat* (village level sub-district or parish), giving adivasi communities, governed through *gram sabha* (village assemblies), the powers of local government and control over natural resources. Whether or not these changes will be interpreted as granting *gram sabha* the right of veto over imposed developments or control of national waters is yet moot. The Act insists on consultation with the *gram sabha* and the provision of detailed information about the need for the acquisition and about the lands to be made available in compensation, before the acquisition of lands for a public purpose can take place. However, a revised Land Acquisition Act is presently being debated in India and may undo some of these gains. That India's 'Scheduled Tribes' need special protections from expropriation is evident from the fact that although Scheduled Tribes make up just 7% of the population of India, they account for 40% of the 30 million people displaced by development between 1951 and 1995. Only one third of those displaced to make way for development in India have been resettled.⁵⁵

In other countries, too, the State's power of eminent domain is qualified. In the Philippines, for example, the law on environmental impact assessments requires 'community consent' before a clearance certificate can be issued for a development to go ahead although it is disputed whether this consent should be obtained at the village (*barangay*), municipal or provincial level. In Colombia, the courts have established that a law requiring community consent to projects is of equal weight to that granting the State the power of eminent domain. Likewise in Chile, legal contradictions between the country's electricity law and Indigenous Peoples Law have led to injunctions temporarily halting construction of the controversial Ralco project which will flood the Pehuenche people off their lands.⁵⁶

1.15 Eminent Domain and the Private Sector:

The move away from state-led development models towards development based on foreign direct investment and private sector initiatives may, in any case, force a rethink of the general applicability of the doctrine of eminent domain. With private companies increasingly building, owning and maintaining large dams and associated works, and raising funds for their projects on the international capital markets, the distinction between public interest and private profit has become increasingly

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blurred. With the era of State planning coming to an end, it may no longer be publicly acceptable for State agencies to expropriate the properties of private citizens to make way for developments by private corporations. Leading dam-building enterprises such as Hydro-Quebec – a for-profit parastatal company - already accept the principle that dam-building should not go ahead without the consent of those directly affected.⁵⁷ This principle has also been publicly endorsed by the International Hydropower Association.⁵⁸

2. Indigenous Peoples, Ethnic Minorities and Dams:

2.1 The Impacts of Large Dams

Although on paper, indigenous peoples (and to a far lesser extent ethnic minorities) have a range of internationally agreed rights that offer considerable legal protection from the abuses of state and private sector power, these rights are rarely observed in projects involving dam development. Overall, the available literature indicates that the experience of indigenous peoples and ethnic minorities with regard to dam projects has been one of:

- cultural alienation
- dispossession, both from their land and other resources;
- lack of consultation;
- lack of compensation or inadequate compensation;
- human rights abuses;
- lowering of living standards.

This section reviews the overall experience of indigenous groups and ethnic minorities with regard to dams, before analysing some of the structural, institutional and political reasons that underlie the ongoing failure of governments and international agencies to observe the internationally-agreed rights of such peoples. The aim of this part of the review is not just to illustrate some of the typical consequences of large dams for the futures of Indigenous Peoples and Ethnic Minorities but also to identify the particular conceptual and procedural failures in project planning and in resettlement and rehabilitation which result in serious impacts on the peoples concerned.

2.1.1 Disproportionate impact:

As the World Bank acknowledges in its 1994 *Bank-wide Review of Projects Involving Involuntary Resettlement*, those resettled as a result of dam projects are generally from the poorest and most vulnerable sections of society.⁵⁹ Such vulnerability reflects not only their exclusion from the decision-making process and economic and political institutions that would enable them to exercise genuine control over their lives and livelihoods but also, in many instances, from racism and from discriminations of class, caste and ethnicity.

Worldwide, indigenous peoples and ethnic minorities make up a disproportionately large percentage of those who lose their livelihoods to dams, either because their communities are directly affected by dam projects or because of the ‘knock-on’ effects of such projects.⁶⁰ In some instances – the Nubians of Sudan, for example – communities have been shifted several times to make way for dams or the development projects associated with them.⁶¹

In Africa, numerous dam projects have involved the forced relocation of indigenous groups or ethnic minorities: in many cases, such as the Volta Dam, the projects have impacted several different ethnic groups at once.⁶²

In the USA, it was poor black sharecroppers who bore the brunt of the impacts of the massive dam building programme undertaken in the Tennessee Valley from 1933 to 1946,⁶³ whilst native Americans have suffered disproportionately from the dams built by state and federal authorities in the arid West, both through the direct loss of their reservation lands and through the illegal abstraction of their water.⁶⁴

In the Philippines, almost all of the larger dam schemes that have been built or proposed have been on the land of the country’s 6-7million indigenous people.⁶⁵ In India, according to government figures from the mid-1980s, between 40-50 per cent of those displaced by development projects have been adivasis.⁶⁶ credible estimates for the numbers moved to make way for dams alone have been placed between 14 to 40 million, of which 60 per cent are adivasis or Dalits (“untouchables”).⁶⁷ Future planned dams development also disproportionately threatens Indigenous Peoples and Ethnic

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Minorities. In the Philippines, for example, many of the dams planned under the 1993-2005 power development programme will affect indigenous land.⁶⁸

2.1.2 Resettlement as Ethnocide

As numerous commentators acknowledge,⁶⁹ involuntary resettlement is a traumatic process, regardless of one's social or economic background. The World Bank, for example, has stated:

“When people are forcibly moved, production systems may be dismantled, long-established residential settlements are disorganized, and kinship groups are scattered. Many jobs and assets are lost. Informal social networks that are part of daily sustenance systems – providing mutual help in childcare, food security, revenue transfers, labour exchange and other basic sources of socio-economic support – collapse because of territorial dispersion. Health care tends to deteriorate. Links between producers and their consumers are often severed, and local labour markets are disrupted. Local organizations and formal and informal associations disappear because of the sudden departure of their members, often in different directions. Traditional authority and management systems can lose leaders. Symbolic markers, such as ancestral shrines and graves, are abandoned, breaking links with the past and with peoples' cultural identity. Not always visible or quantifiable, these processes are nonetheless real. The cumulative effect is that the social fabric and economy are torn apart.”

NGOs working on the issue concur. As the Multiple Action Research Group, India, notes,

*“Persons who are uprooted and rehabilitated in another place have to undergo the entire process of resocialisation and adjustment. Traditional social relations and community networks break down as a result of displacement, leading to physical and psychological stress. It also leads to economic disruption, often resulting in impoverishment and insecurity. Inadequate and unplanned resettlement, with little or no share in the benefits from the project that has caused this displacement, further increases the misery of those affected. A hostile host population in the new area only serves to aggravate the trauma. Fall out in the form of alcoholism, gambling, prostitution and even morbidity is not unknown.”*⁷⁰

And, as Ackerman points out,

*“Even where planning is effective, some (especially the aged) will never come to terms with their new homes. For them the transition period ends only with death.”*⁷¹

In the case of indigenous peoples and ethnic minorities, however, the psychological and social traumas of resettlement are exacerbated by the discrimination that they frequently face from mainstream society; by the strong cultural, economic and religious ties that often bind them to their particular land; and, in many cases, by a past history of oppression, dislocation and exploitation. For example, the Waimiri-Atroari Indians of Northern Brazil, were estimated to number some 6,000 in 1905. Eighty years later, massacres and disease left only 374 Waimiri-Atroari alive. In 1987, the gates of the Balbina Dam were closed, flooding two villages in which lived 107 of the remaining members of the tribe and blocking the annual upstream migration of the turtles whose eggs are an important part of their diet. The Waimiri-Atroari are now further threatened by a plan to divert the river Alalau to increase the flow into the Balbina Reservoir.⁷²

Speaking of the threat posed to the Himba pastoralists by the Epupa dam in Namibia, Maongo Hembinda, told the WCD joint consultation on Dams, Indigenous Peoples and Ethnic Minorities in Geneva:

‘Cattle is one thing we have received from God and we depend on them very heavily. If the cattle die from the construction of the dam, we will also die, because we depend on the cattle. This is a form of killing the Himba people – it is a mystery to us why the government is doing

*this to us.... God created all peoples equal. We should be treated the same way as all other peoples.*⁷³

All too often, forced resettlement can thus prove the final blow to their integrity as a people. What may appear to planners as a minor impact⁷⁴ - the submergence of ancestral graves, for example, or even specific forest glades or river pools - can have serious social repercussions, since the economic and religious life of many indigenous peoples is often linked to specific topography of their lands. A case in point are the Maria Gonds of India, who are threatened with displacement by the Bhopalpatnam and Inchampalli dams. Maria social, economic and religious life is not merely linked to the forest but rather to specific parts of the forest. Each clan has its own clan god who in Maria belief is the true owner of the land, which is not transferable. Megalithic monuments erected to the dead connect the clan direct to the soil.⁷⁵ Discussing the Akawaio Indians of Guyana, threatened in the 1970s by the Upper Mazaruni Dam (now cancelled), Survival International also notes the way in which the physical landscape of indigenous groups is intimately linked to their social, political and cultural way of life:

*"The Akawaio have invested the landscape with special significance. It is an environment transformed by their ancestors in conjunction with the mystic forces of the universe. All its features – its rivers, falls, mountains, rocks, savannahs and valleys – were designed by their forebears, whose names and deeds are recorded in myth, song, dance and poetry. The vital forces of each locality are linked to the human community. They protect, guide, feed and even chastise its members. Thus the landscape is dynamic, every part is living, functional, has meaning and moral value."*⁷⁶

Such intimate relationship with the land – often expressed in mytho-poetic language⁷⁷ that cannot be reduced to the cost-benefit framework of planners (see below) – has been stressed time and again by indigenous peoples facing relocation and/or the upheavals of imposed development. As the World Council of Indigenous Peoples put it in 1985:

"The Earth is the foundation of Indigenous Peoples. It is the seat of spirituality, the fountain from which our cultures and languages flourish. The Earth is our historian, the keeper of events and the bones of our forefathers. Earth provides us food, medicine, shelter and clothing. It is the source of our independence: it is our Mother. We do not dominate Her; we must harmonize with her."

*Next to shooting Indigenous Peoples, the surest way to kill us is to separate us from our part of the Earth. Once separated, we will either perish in body or our minds and spirits will be altered so that we end up mimicking foreign ways, adopt foreign languages and build a foreign prison around our Indigenous spirits, a prison that suffocates rather than nourishes as our traditional territories of the Earth do. Over time, we lose our identity and eventually die or are crippled as we are stuffed under the name of 'assimilation' into another society."*⁷⁸

Indeed, such is the tie that they feel for their lands and cultural sites, that many indigenous groups and ethnic minorities perceive the flooding of their lands as a deliberate act of genocide. In the case of the planned Ilisu Dam in Turkey, for example, which will require the forcible relocation of 12,000 - 16,000 people, mainly ethnic minority Kurds, and flood the historic town of Hasankeyf, the United Kurdish Committee has stated that it sees the dam as part of "a deliberate policy of the Turkish authorities to eliminate all traces of Kurdish civilisation."⁷⁹

2.1.3 Failure to identity the cultural distinctiveness of affected peoples:

In 1982, the World Bank adopted a special policy on 'Tribal Peoples in Bank-financed Projects', designed to ensure that their rights and interests were taken into account in future project planning. The policy was revised in 1991.⁸⁰ Subsequent internal reviews in the World Bank have revealed a persistent failure of World Bank staff to apply this policy in practice.

In the case of the Sardar Sarovar Project in India, for example, between 70% and 80% of the 200,000 people directly threatened with relocation to make way for the reservoir are classified by the

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Government of India as members of ‘Scheduled Tribes’. World Bank staff persistently dodged applying the Bank’s policy on tribal peoples to the project on such grounds as the people wore factory-made shirts or had images of Hindu gods in their homes. Project staff continued to deny the applicability of the policy even after the World Bank’s legal expert specifically noted that the affected ethnic groups ‘fell within the scope of the World Bank’s policy on Tribal people (OMS 2.34)’.⁸¹ The Report of the Independent Review of Sardar Sarovar identifies the Bank’s failure to recognise the cultural distinctiveness of the peoples in the submergence zone as one of the main obstacles to their successful resettlement and rehabilitation.⁸² The review concluded:

*“In drafting the terms and conditions of the 1985 credit and loan agreements, the Bank failed to take adequate account of the fact that a large proportion of those at risk from the development of the Sardar Sarovar Project are tribal people. This meant that insufficient account was taken of the principles enshrined in the Bank’s 1982 Operational Manual Statement outlining its policies regarding tribal peoples.”*⁸³

The African Development Bank (AfDB) has encountered a similar problem with its own project portfolio. In a 1998 review of its experience financing dam projects in Africa, the AfDB noted a persistent failure to identify the main ‘target groups’ at the time of feasibility studies or appraisal. The review concluded that, as a result, ‘on the whole, the environmental performance of 6 out of 10 of the projects considered in this review is insufficient owing to the absence of measures to mitigate their negative impact as well as the failure to adequately address the population resettlement issues’.⁸⁴

2.1.4 No Prior Informed Consent

ILO Convention 169 clearly states that relocation of indigenous peoples should only take place with their “free and informed consent” or, failing that, only following a process of consultation that allows for “effective representation of the peoples’ concerned.”⁸⁵

The reality for many dam-affected indigenous groups and ethnic minorities is quite otherwise. At one extreme, affected communities have in many instances been given no prior warning whatsoever of a project: the first knowledge the tribal people of Bihar had of the Kutku dam was when huts were constructed for workers and surveyors began to walk across their fields with tape measures. In other instances they have only learned of the decision to build a dam when eviction notices are pinned up in their villages. Insofar as their “participation” is later invited in the project, it is often primarily with a view to ensuring their easy eviction: in many cases input that challenges the project is deemed at best unwelcome, and at worst subversive (see below: Human Rights Abuses).⁸⁶ Likewise, the Evenks, Evens, Chukchi, northern Yakuts and Yukaghir peoples of the Republic of Sakha in Siberia were never consulted about plans to build a cascade of five dams on the Kolyma River, nor were any proper social impact studies made to help plan a future for the affected peoples. According to Vasili Robbek of the Institute on Northern National Minority Problems, the projects, which are currently under construction, ‘may turn the aboriginal peoples of Kolyma into ecological refugees and may lead to ethnocide’.⁸⁷

Where affected communities are informed of projects, the information provided is frequently misleading and does not provide a basis on which to make an informed choice as to whether or not to consent to relocation. As Enakshi Thukral of the Multiple Action Research Group in India remarks of oustees affected by the Sardar Sarovar Project, “not only were the people uninformed but they were often deliberately misinformed about the project and their future.”⁸⁸

In other cases, particularly those involving isolated ethnic minorities or indigenous peoples, the content of the information provided is so beyond the experience of those to be relocated that it simply makes no sense to them. The oustees from the Nagarjunsagar Dam in India – a third of whom belonged to the ‘scheduled tribes’, mainly the Lambada people, and two thirds of whom were Dalits – were simply unable to comprehend that the dam would result in their lands being submerged and their

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being displaced. It was not that they were stupid: merely that a reservoir the size of the dam's was outside of their experience. Based on what they knew of floods, they assumed that even if the river waters did rise, their villages would be safe because they were higher than the river itself.⁸⁹

Although the 1990s have seen project authorities, often under pressure from donors, arranging "consultations" with project-affected people, these rarely involve genuine discussion or dialogue. A contested example is the case of the Nam Theun 2 dam in Laos, which will displace approximately 4,500 people — primarily from the Lao Theung and Lao Loum ethnic minority groups. Whereas some consultants contracted to the project argue that recently local people have been appropriately informed and local leaders were involved, other observers report that earlier consultations consisted largely of officials telling local people that the dam will be built and they will benefit from it. Villagers report:

"The governor asked for our co-operation to leave our homes. But he nicely promised to give us new homes and a good road in the village. He said every house would have electricity. Well, we have no television, no refrigerators and we don't know yet what we can use that electricity for. But it might be good to have it" says Thiang, a villager who will be relocated by the dam. "If we had a choice we would stay and protect the forest. We feel very sad to lose the forest. But what can we do?"⁹⁰

The team which undertook the economic impact assessment for the project, witnessed one "public forum" held in a town downstream of the dam site. The meeting was attended by World Bank staff and senior NTEC representatives, as well as Resettlement Committee (RC), Provincial and District representatives. The team state:

"Several fluent Lao speakers complained that RC representatives failed to translate negative comments or concerns made by local citizens about the dam project. Likewise a very senior NTEC representative attending the meeting complained that local citizens were receiving misinformation about the dam's probable impacts."⁹¹

The "editing out" of critical voices is equally apparent within those institutions that plan, fund or construct dams. In the case of the Bio Bio Dam, Chile, a highly critical report commissioned by the World Bank, whose private sector arm, the International Finance Corporation (IFC), helped finance the dam, was heavily censored by lawyers. One third of the report has never been released, despite the fact that improved transparency on the part of project developers is one of the main recommendations in the released portions of the report. The company building the dam also refused to release the results of a social impact study to the Pehuenche communities affected by the dam despite an agreement with the consultant who undertook it that the results would be shared with affected communities.⁹²

2.1.5 Failure to recognise the impact of loss of land and livelihood

As summarised in Part I, international law and the policies of the main development agencies respect the property rights of all citizens, including minorities, and include special provisions to recognise the rights of Indigenous Peoples to their land and territories. The special ties that these peoples have with their customary lands has also been noted.

The available literature indicates that for most indigenous peoples and ethnic minorities faced by dam-based development projects, the experience has been one of dispossession, exclusion and denial of their rights. Most obviously, the construction of dams and their ancillary works, together with the wider development projects connected to them, have led, in many cases, to the loss of considerable areas of agricultural land, forest, fishing grounds, grazing lands and other resources on which indigenous peoples and ethnic minorities rely for their livelihoods and ways of living.

In Ethiopia, the World Bank-funded Awash valley programme destroyed much of the forest and grazing lands on which 150,000 Afar pastoralists depended. The subsequent conversion of most of the irrigable land to cotton and sugar cane plantations led to the displacement of 20,000 people

who became dependent on food relief. The Afar came to view the development project as 'punishment from God.'⁹³

In Brazil, the Tucuruí Dam flooded 2,430 square kilometres of tropical forest, including parts of the land belonging to the Parakana and Gavião de Montanha peoples.⁹⁴ Other indigenous communities – the Gavião Parakateje, the Asurini do Tocantins, the Krikati and the Guajajara – lost land to transmission lines.⁹⁵

In Peninsula Malaysia, government authorities are denying the land rights of the 400-strong Temuan people who will be displaced by the proposed Sungai Selangor dam, a US\$2 billion water supply project about 60 kilometres from Kuala Lumpur. Instead of recognising the Temuan's rights to the full area that they customarily use, the government is only offering them minimal cash compensation and two hectares of land per family on government resettlement schemes. Lawyers acting for the Temuan, a 'negrito' people who make a comfortable living from agro-forestry, hunting, fishing, and as eco-tourist guides, allege that this is unconstitutional. They point to the fact that High Courts in the States of Perak and Johor have twice ruled that the aboriginal peoples of the Peninsula have proprietary rights over their ancestral lands.⁹⁶

In India, the dispossession of adivasi people has been a very widespread problem. India is a signatory of ILO Convention 107 and consequently legally recognises the right of 'Scheduled Tribes' to the collective ownership of the lands they traditionally occupy. In practice, however, the law is not applied and land titling procedures have not been adjusted to acknowledge tribal rights to their commons. Although some adivasi manage to acquire individual title to some of their cultivated plots many others do not. Moreover, their wider rights to pastures, shifting cultivation areas, hunting lands, collecting zones and fishing grounds are denied. Many are treated as 'encroachers' on State lands or as 'poachers' in forestry reserves and protected areas. Accordingly, in planning large dams, Government agencies distinguish between 'landed' and 'landless' adivasis thus denying compensation to those without land titles and completely ignoring the need to also compensate people for their loss of the substantial areas they use for hunting, fishing, grazing and gathering.⁹⁷

In 1985, the human rights organisation, Survival International filed a complaint about this issue with the International Labour Organisation with specific reference to the World Bank-funded Sardar Sarovar Project on the Narmada river, pointing out that by treating between 75 and 85 % of the tribal outsees as 'landless' the Government of India was in clear violation of ILO Convention 107. After receiving information from the World Bank and Indian Government, the ILO's committee of experts on the observation of conventions substantially upheld Survival International's complaint. Noting that the compensation arrangements did not ensure *prima facie* that the requirements of the Convention were met, the ILO called on the Government to revise the resettlement programme in line with the Convention.⁹⁸

These issues had, in fact, been brought to the attention of the World Bank and Government of India prior to the signing of the project agreements. In 1984, a World Bank consultant made specific recommendations for overcoming these problems. A national policy on resettlement should be carefully worked out. Measures should be taken to ensure that all oustees are given land in compensation, not just those who had managed to obtain legal title. Cash compensation should only be offered to oustees who rejected compensation in land. Institutional and participatory arrangements should be made to ensure compliance and the provision of services in the resettlement villages etc.⁹⁹

Despite this, the 1985 project agreement continued to deny the rights of 'encroachers' and illegally discriminated between 'landed' and 'landless' oustees. Although in 1988, the Government of the State of Gujarat lifted the distinction between landed and landless oustees assuring two hectares of irrigable land for each oustee family, the states of Maharashtra and Madhya Pradesh continued to deny the land rights of tribal peoples without individual land titles. All three states persist in denying the tribal peoples' rights to their wider territories used for hunting, gathering, shifting cultivation, grazing and

fishing.¹⁰⁰ Dalits have faced similar problems and have also resisted their treatment at the hands of the authorities.¹⁰¹

The land rights of the Saami people are likewise not recognised in Sweden, leading to serious problems for them when their grazing lands are expropriated for reservoirs. For example, referring to the impact of the Suorva dam, which was constructed in a National Park in northern Sweden, Lennart Pittja of the National Union of the Swedish Saami notes:

“All the land under water was used by my father and grandfather for reindeer herding. Many troubles have come out of this. First, it is harder for the reindeer to find food high up in the mountains. In the springtime when they come up [from the lowlands], the grass starts to grow by the river, so that is where the reindeer would go first to find food. But now because all this area is flooded, they have to go up on the mountains where the weather is much harsher. It is snowing even in May. It is hard for us to find food for the reindeer. Also this area that is under water was used by the female reindeer to deliver their calves. We cannot use it for calving anymore, so, again, we have to go up to the mountains where it is much colder. Many of our calves freeze to death because of this... As I said, the Suorva dam was built in four different stages, which has meant that my father and grandfathers have been forced to move their settlements four times. Just imagine having to burn up your house and re-build it again – four times.”¹⁰²

In the US, thousands of hectares of Indian land have been lost to dams. In North Dakota, a quarter of the Fort Berthold Reservation, shared by the Arikara, Mandan and Hidatsa peoples of the upper Missouri, for example, was flooded as a result of a staircase of dams (the Missouri River Development Project (MRDP), built during the 1950s and 1960s. The land lost included the best and most valuable and productive land on the reservation – the bottom lands along the river where most people lived.¹⁰³ Five different Sioux reservations also lost land. Again, the impact was quite severe: the dams destroyed nearly 90 per cent of the tribes’ timberland, 75 per cent of the wild game, and the best agricultural lands.¹⁰⁴ Ultimately, the Missouri dams cost the indigenous nations of the Missouri Valley an estimated 142,000 hectares of their best land – including a number of burial and other sacred sites – as well as further impoverishment and severe cultural and emotional trauma. A guarantee, used to rationalise the plan in the first place, that some 87,000 hectares of Indian land would be irrigated was simply scrapped as the project neared completion. As researcher Bernard Shanks puts it:

“MRDP replaced the subsistence economy of the Missouri River Indians . . . with a welfare economy . . . As a result of the project, the Indians bore a disproportionate share of the social cost of water development, while having no share in the benefits.”¹⁰⁵

A specific complaint by the Cree people affected by the Nelson River Diversion Project is that assessments of adequate compensation for losses is made impossible due to the lack of pre-project studies. Such studies as were done were framed in a very western style and ignored issues of greatest concern to the Cree themselves. Nor is indigenous knowledge considered a substitute for a lack of scientific assessments. The problem has been compounded by a lack of post-project assessments, meaning there are neither base line data nor post-project information on which to assess damages. As Hertlein notes:

‘Unfortunately, over the years that the project has been in place, the living source of information of the social impacts of the project, in the form of Elders who possess the traditional knowledge are passing away. Consequently, addressing the social impacts continues to get harder from either perspective since the western-based scientific measurement is lacking and the traditional knowledge of the Cree slowly gets lost.’¹⁰⁶

Even when negotiated agreements seem to protect Indigenous peoples against loss of access to the resources on which they depend, they are not always effective. Section 22.2.2 of the James Bay and Northern Quebec Agreement (JBNQA) establishes as a fundamental principle “the protection of the

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Cree people, their economies and the wildlife resources upon which they depend,” relying on “an environmental and social impact assessment and review procedure established to minimize the environmental and social impact of development when negative on the native people and the wildlife resources of the territory.” However, according to the Cree:

*“The promised regime to deal with the social impacts and opportunities and to craft environmental regulation specific to the Territory has not been implemented.... Rather than an upstanding, forthright and honest fulfilment of these commitments to the Cree people, we have seen 23 years of attempts by Canada and Quebec and their entities to deny, diminish and refuse to work with the Cree people ...”*¹⁰⁷

Indeed, despite the guarantees in the JBNQA, some 5,000 square kilometres of forest have been clear-cut in the Cree territory without any assessment whatsoever of its environmental or social impact.¹⁰⁸

2.1.6 Secondary Displacement and Conflict

The appropriation or loss of land and other resources due to dam projects is not restricted to the areas directly impacted by dams. Indigenous groups and ethnic minorities outside the area may also find their land and other resources expropriated for associated industrial or agricultural projects or for the resettlement of those relocated by dams. Such groups are not generally considered as project affected peoples and their rights are frequently abused.

In the case of the Maheshwar Dam in India, now under construction, land earmarked for resettlement sites is currently being used by ethnic minority dalits and indigenous adivasi groups. As Heffa Schucking reports:

“The resettlement site for Jalud is at a location called ‘Samraj’ . . . [Those living there] explained to me that, while they were never well off, their situation has become desperate since April 1998. At this time, representatives of [the dam developers] entered the village with a police force and forcibly annexed and bulldozed the land of 34 families as well as the entire pasture land of the hamlet. Although all of these families have either land titles (which I was shown) or the status of long-term encroaches (and the receipts to back this claim), there was no due process of land acquisition or even written notices served. Instead from one day to the next, their land was bulldozed and taken from them. When some individuals attempted to peacefully intervene and explained that they own title to this land, the police responded by man-handling these people and the representatives of MPEB threatened to have the entire hamlet thrown into jail.

*“The consequences of these events for the Harijan/Adivasi community are catastrophic. Since they lost their entire pasture lands they were forced to sell almost all of their cattle and buffaloes – some 400 animals. On the private and encroached lands that were taken, they had been growing subsistence crops such as sorghum. Anokibai, a Bhil adivasi, asks: ‘If the land has gone, then we are also gone. If we don’t have the land, will we then eat stones or pebbles? How will we live and how will we eat?’”*¹⁰⁹

Through displacing one community to resettle another, dam-based development strategies have thus often resulted in a spiral of displacement which goes far beyond the actual submergence area of individual dams. Moreover, the pressure on land in the resettlement areas can be a major cause of land disputes, which often takes the mantle of “ethnic” conflict.

The US-funded Kaptai hydropower dam in the Chittagong Hill Tracts (CHT) in south-east Bangladesh, for example, displaced more than 100,000 Chakma people – one sixth of the total Chakma population – and flooded around two fifths of their cultivatable land. Some 40,000 of those displaced left for India and today live in Arunachal Pradesh. They have never gained citizenship for themselves or for their children born in India. A further 20,000 are supposed to have moved into Arakan in Burma. Others were dispersed within the CHT. As government officials acknowledge, the resulting land shortage and resentment of the government contributed to the bloody conflict between

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the Buddhist Chakma and Muslim Bengali settlers which affected the region since Kaptai was completed in 1962, and which has cost the lives of an estimated 10,000 people.¹¹⁰

Conflicts over land and associated inter-ethnic strife also characterised the resettlement of the Sudanese Nubians (Halfans) displaced by the Aswan High Dam. Under the resettlement scheme, the Halfans were relocated to an area occupied by Shukriya pastoralists, who continued to graze their animals on land allocated to the Halfans for farming. In 1974, the conflicts reached such a pitch that the Sudanese Army had to be called in to protect the Halfan's cultivated fields. In a study undertaken nine years after resettlement, Hussein Fahim reports: "While the Halfans were lamenting the loss of their . . . homeland, the Shukriya nomads were regarding the expropriation of their land by outsiders with great displeasure."¹¹¹

Other knock-on effects of dam projects have also led to conflict which has taken an "ethnic" character, with ethnic majorities being encouraged by local politicians and economic elites to scapegoat local minorities. In the Senegal Valley, for example, the completion of the Diama and Manantali Dams on the Senegal River encouraged the politically and economic elite of the 'Moors' in Mauritania,¹¹² who before had had little interest in agriculture, to appropriate river basin land in anticipation of making large profits from the development of medium and large-scale irrigation schemes.¹¹³ Backed by the security forces, the Moors began to take over lands from the black inhabitants of the Valley, forcibly expelling thousands of black Mauritanian nationals as "foreigners" and expropriating their land. Senegal, meanwhile, retaliated by expelling thousands of its minority Moorish population. At least 60,000 Senegalese and black Mauritians were deported or fled from Mauritania, and twice that number of Moors left Senegal.

Indeed, in some instances, river basin development and subsequent resettlement has been deliberately used by certain interests to ferment "ethnic" violence as part of a wider political strategy for gaining, or shoring up, political power. In the case of the Accelerated Mahaweli Project in Sri Lanka, for example, officials within the Mahaweli Authority have admitted that, in league with militant Buddhist priests, they used the resettlement programme to drive a wedge between minority communities of Tamil-speaking Hindus and Muslims by settling poverty-stricken households from the Singala-speaking Buddhist majority within and around minority communities.¹¹⁴ As Thayer Scudder of the California Institute of Technology notes:

*"Though contrary to project goals, which stipulated that ethnic and religiously distinct populations were not to be mixed and that minorities were to receive plots according to their proportionate representation within the national population, these actions were ignored by such donors as the United States Agency for International Development and the World Bank. Subsequently, massacres on both sides occurred, in some instances in the very communities where they had been predicted."*¹¹⁵

Some dams have contributed to armed conflict without ever being built. One of the most well-known cases is that of the World Bank-supported Chico dams project in the Philippines which threatened to displace some 80,000 Kalinga and Bontoc people from their ancestral lands.¹¹⁶ When locals protested against the project, the Marcos regime tried to undermine resistance with bribery and obfuscation. However, resistance hardened and the people resorted to civil disobedience to prevent surveyors getting access to the area. Engineers' campsites were dismantled and roads were blocked, prompting the government to send in the army and initiate a campaign of violence.¹¹⁷ The Igorot leader Macli-ing Dulag was assassinated and many people took to the hills and joined the New Peoples Army in defiance of the imposed development programme.¹¹⁸ The conflict endured long after the World Bank pulled out and the project was cancelled. Local villages were repeatedly bombed and subjected to counter-insurgency programmes as a result.¹¹⁹

2.1.7 Lack of Compensation or Inadequate Compensation

Although national laws have long existed in many countries requiring compensation for those resettled by development projects, in the very many cases involving indigenous peoples, ethnic minorities and other vulnerable sections of society these laws have been more honoured in the breach

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than the observance. In the Philippines, for example, those resettled in the 1950s as a result of the Ambuklao and Binga Dams on Agno River still have to be compensated for their losses.¹²⁰ Ethnic Minorities and Indigenous Peoples may suffer disproportionately in this respect as they may lack formal citizenship, residency or land tenure paperwork. According to the World Bank, one-fifth of the 10,800 people displaced by the Khao Laem Dam in Thailand were Karen. Because the Karen families did not possess legal residence papers they were considered ineligible for resettlement land or house plots, unlike ethnic Thai oustees.¹²¹

Moreover, despite the passage of ILO Conventions 107 and 169 in 1957 and 1989, and the World Bank's Guidelines on Involuntary Resettlement and Tribal Peoples in 1982, inadequate compensation for oustees from dam projects continues to be all too common. In many instances, oustees have been resettled on inferior land and frequently many of those relocated are given no land at all, either because there is not enough to go around or because only those who have legal documents to prove ownership are compensated.

In the case of the Volta Dam, it had been intended that sufficient land be cleared to provide every farmer with 12 acres. But by 1966, as the deadline of impoundment approached, only 6,000 hectares had been cleared from a target of 22,000 hectares. By way of comparison, the flooded area included 52,000 hectares in productive use.¹²²

Those resettled as a result of the Hirakud Dam in India, many of them Gonds, only received land if they were able to produce proof of ownership. As a result many were left out even though they had been cultivating their land for generations.¹²³ Likewise, in Turkey, contrary to national law, the vast majority of landless people displaced by the Ataturk Dam and other dams being developed as part of the Greater Anatolia Project were in many cases not compensated or rehabilitated at all, but were simply left to fend for themselves.¹²⁴

Where cash payments are made as compensation, indigenous peoples may face particular problems, particularly where they are unaccustomed to money matters and where traditions exclude the concept of land as a negotiable commodity. Disorientation by the dispossession of their lands, and often unused to handling (comparatively) large sums of money, they may squander improvidently the money given them in exchange for their lands.¹²⁵ At Hirakud, for example, the tribal oustees, "fell prey to businessmen selling colourful tinkets and consumer items like transistors and watches, or lost their money in gambling or on liquor."¹²⁶ This, notes the Multiple Action Research Group, was also the experience of the oustees of the Koyna project in the 1960s and more recently the Kutku dam oustees. As Karve and Nimbkar commented nine years after the Koyna dam was built; "It was an error to hand over thousands of rupees to people who had hardly handled cash at all. Now, a number of years later, a large majority of the displaced are still without a roof over their head."¹²⁷

Negligent resettlement planning and entirely inadequate compensation schemes characterised the Chandil and Icha dams on the Subarnarekha river in India's Bihar State, which ended up displacing some 68,000 people and inundated 30,000 hectares of farmland and forest. The adivasis threatened by the Chandil dam protested against the project from its inception in 1975 and, in 1978, some 10,000 of them demonstrated against the dam at the construction site. Police harassment of a protest fast and then police firings on unarmed protesters caused four deaths. The project continued nevertheless and in 1982 the World Bank approved a US\$127 million loan to the project. Despite the absence of a resettlement plan, the Chandil dam's sluices were closed in summer of 1988 posing an immediate threat to some 10,000 indigenous people, while 30,000 others faced inundation over the coming 20 months as the reservoir began to fill. University researchers described scenes of mass misery, and one World Bank official advised Bank headquarters that the situation required the emergency intervention of the International Red Cross. Since then the situation has become even more critical.¹²⁸

Such experiences lay behind the ILO's recommendation that compensation should be in the form of land-for-land, a guideline also adopted by the World Bank in its Operation Directive 4.30. Nonetheless, the recommendations have been routinely flouted in many dam projects, including many of those since funded by the World Bank.

The problems for the adivasi peoples being displaced to make way for the Sardar Sarovar project, noted above, were compounded in the resettlement programme. Not only were the actual numbers of project-affected persons hugely under-estimated but lands for resettling the oustees were in any case unavailable.¹²⁹ Before engaging in the project, the World Bank was warned in 1984 that the Narmada Planning Authority, which was to oversee the resettlement programme ‘at this point lacks the organisational strength and professional personnel to carry out a resettlement and rehabilitation project of great magnitude’.¹³⁰ The project went ahead, nevertheless.

At the same time, in defiance of India’s international legal obligations the World Bank was also considering funding other dams on the Narmada river with no intention of providing land-for-land for those dispossessed. In planning the resettlement of the estimated 100,000 people, many of them members of Scheduled Tribes, who would be moved to make way for the Narmada Sagar project, the World Bank noted that:

“Planning thus far for the Narmada Sagar project resettlement is based on the realistic and innovative assumption that many oustees will not be able to acquire equivalent land to replace that flooded.”¹³¹

2.1.8 Gender Inequities Exacerbated

Resettlement affects women differently from men¹³² and the form that it takes can greatly exacerbate existing gender inequalities, undermining the position of women and their power to exercise control over their lives.

For example, among the Cree affected by the Nelson River Diversion Project, the decline of traditional economic activities – such as fishing, hunting, trapping, and gathering – has had specific impacts on women and has affected their role in the family. Whereas Cree women and children used to accompany adult males on hunting trips, these kinds of excursions are now curtailed or carried out by men alone. Women often now simply stay at home, while social problems have increased among Cree youth.¹³³

In the vast majority of cases involving the forced relocation of indigenous peoples and ethnic minorities as a result of dam project, women have been denied compensation for the plots of land they have previously cultivated, largely because they do not “own” the property or have it registered in their name. They are therefore seldom entitled to compensation. In the case of the Sardar Sarovar Project, for example, only households headed by the “senior” male in a family or by the eldest son were deemed eligible to receive land as compensation. Women-headed households – those of widows, for example – were excluded from the resettlement package.¹³⁴

The Asian Development Bank-funded Batang Ai project in the Malaysian State of Sarawak in Borneo had a similar uneven impact on women. A study by Hew Ching Sim of the effects of the resettlement onto a plantation established and administered by the State-owned Sarawak Land Consolidation and Rehabilitation Authority (SALCRA), showed how the Iban women suffered from their change of circumstance. She noted how:

“SALCRA’s policy of one certificate of ownership per household has meant that Iban women’s traditional rights over land have been abrogated and thus a dependency relationship is created. The new system of plantation agriculture has also eroded women’s traditional equality with men in the sphere of production.”¹³⁵

Compensation, which should have been paid to both men and women as co-owners of the land was only paid to male ‘heads of household’. Some women, interviewed by me in 1987, noted that their husbands had abandoned them, taking the money and setting up house with other women, and leaving them virtually destitute. Overall, incomes declined, gathered foods became scarcer and firewood hard to find. The women also found it hard to carry on their traditional weaving and basketry, as they had lost access to forests from which to collect the materials. Summarising the people’s sense of despair one old woman told me: ‘we are dead already.’¹³⁶

In cases where project-affected communities are integrated into agricultural schemes involving contract farming, such as in the Jahaly-Pacharr scheme in Gambia, where 2,000 Mandinka households were contracted to grow rice as part of a large-scale irrigation project funded by the International Fund for Agricultural Development, additional problems can arise. Because the onus of finding and organizing the labour force is placed on the contracted grower – generally the male head of the household – contract farming can create new intra-household tensions, resulting in increased divorce, domestic tension and the renegotiations of family and marital responsibilities, often to the detriment of women.¹³⁷ As Scudder notes: “A separate problem is the frequency with which focus on a single cash crop lowers the status of women, especially in cases where they had their own pre-project fields or crops.”¹³⁸

Women may find themselves further marginalised where resettlement breaks up existing communities and extended family networks. As Thukral notes of women in India; “Because women in India are much less mobile than men, the breakdown of village and social units affects them much more severely. The fact that she might be leaving relatives and friends behind, or may never again meet her daughter who is married into a village which will not be displaced, is a great cause of concern for the woman, a fear that cannot easily be brushed aside.”¹³⁹

Where resettlement results in economic hardship, as has generally been the case for indigenous peoples and ethnic minorities, women may find themselves pressured into prostitution, bringing additional discrimination. In Laos, the provincial office of the Attapeu Lao Women’s Union has reported that 15 Lao Theung women displaced by the Houay Ho dam became prostitutes for workers on the construction site. This is the first time prostitution had been recorded in the area and raises the possibility of AIDS being introduced in a region with very poor public health services.¹⁴⁰

2.1.9 Human Rights Abuses

Resettlement is often resisted, leading, in many cases, to violence and accompanying human rights abuses. In addition to the flouting of international and national laws and agreements intended to protect the economic interests of project-affected people, there are well-documented cases where oustees and their supporters have been intimidated, beaten up or murdered by State or paramilitary forces for opposing projects. Other human rights abuses against those who have resisted resettlement include the burning of homes, illegal incarceration and rape.¹⁴¹

For example, when some of the 21,000 Mazatec Indians displaced by Mexico’s Miguel Aleman Dam in the late 1950s refused to move, employees from the Papaloapan River Commission set fire to their homes. The army had to be called in several times to quell the resulting unrest in Indian communities.¹⁴²

In the case of the Sardar Sarovar Project in India, human rights abuses have included serious infringements of the International Declaration of Human Rights, the United Nations Code of Conduct for Law Enforcement Officials (1979) and the International Covenant on Civil and Political Rights (1966).¹⁴³ Abuses have included:

*“unprovoked, excessive physical abuse towards non-violent protestors; discriminatory arrests based on fabricated, trumped up charges; arbitrary invocation of prohibitory orders to check the movement of activists; failure to provide charges upon arrest and witness before a magistrate within the constitutionally mandated period; failure to provide food and medical care to detainees; police use of intimidation, manipulation and coercion of Narmada citizens; theft of personal property by police and other state officials; and the failure of law enforcement to be representative of, and responsible and accountable to, the community as a whole.”*¹⁴⁴

In a number of other cases, including Sardar Sarovar, Chico River (Philippines), Kariba (Zambia), Urra (Colombia) and Chandil (India) oustees or protesters have been killed or murdered.¹⁴⁵ In the case of the Chixoy Dam in Guatemala, for example, some 376 Maya Achi people, mostly women and

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children, were massacred by the security forces when they resisted eviction from their village of Rio Negro to make way for the dam's reservoir. In many cases, those murdered had been raped and tortured prior to being shot. In a study based on interviews with survivors, the human rights group Witness for Peace reports:

*"They were strangling many of the women by putting ropes around their necks and twisting the ropes with sticks. They were also beating other women with clubs and rifles and kicking and punching them. 'I remember one woman,' [Jaime, a survivor who was 10 years old at the time] relates, 'a soldier jumped up and kicked her in the back. He must have broken her spine, because she tried to get up but her legs wouldn't move. Then he smashed her skull with his rifle' . . . The patrollers killed the children by tying ropes around their ankles and swinging them, smashing their heads and bodies into rocks and trees."*¹⁴⁶

Despite the massacres, the World Bank and the Inter-American Development Bank both gave two loans for Chixoy, the World Bank's second loan being made two years after the mass murders.

Nor is this a problem of the past. Indigenous peoples and ethnic minorities affected by numerous contemporary projects – including projects for which finance is currently being sought – charge that abuse of their human rights is widespread, often involving the multiple breach of internationally agreed undertakings. The Ilisu Dam in Turkey is a case in point. The United Kurdish Committee, an alliance of 20 UK-based Kurdish groups, charges that the project contravenes a range of internationally agreed human rights, notably those relating to "the choice of the citizen of his place of abode, the right to a public and fair hearing of the indigenous population and the Right to Self-Determination of the Kurdish People."

More specifically, the group argues that the project is in violation of:

- Articles 6,8,13 of the European Convention on Human Rights 1950
- Article 1 of the First Protocol of the European Convention on Human Rights 1950
- Articles 1,7,12,17 and 27 of the International Covenant on Civil and Political Rights (1966)
- The Universal Declaration of Human Rights (Articles 8,10,13 and 17)
- The UN Declaration on the Rights to Development (Article 2)
- The Declaration on the Rights of Persons belonging to National or Ethnic Religious or Linguistic Minorities (Articles 1, 2, 4 and 5)
- The UN Draft Declaration on the Rights of Indigenous Peoples (Articles 3,6,7,12,19,25,26,27,30 and 37)¹⁴⁷

2.1.10 Worse Off than Before

"Why didn't they just poison us? Then we wouldn't have to live in this shit-hole and the government could have survived alone with its precious dam all to itself." Ms Ram Bai, adivasi forced to move to a slum after losing her land to Bargi Dam, Narmada River, India.¹⁴⁸

Under World Bank guidelines, resettlement should "improve or at least restore former living standards and earning capacity"¹⁴⁹ of those resettled. Very few official studies have been undertaken to assess how far this has been achieved for projects involving indigenous peoples or ethnic minorities. The problem is hampered both by the failure of the relevant authorities even to keep the sort of baseline data that might allow for a proper assessment of project outcomes and by the difficulties of tracking down those relocated – not least because many have been forced to move from their resettlement sites due to the lack of economic opportunities. The few official studies that have been undertaken – coupled with reports from indigenous groups and NGOs – strongly suggest that the overall picture is one of livelihoods being degraded, if not destroyed.

For example, a 1993 study by the World Bank's Operations Evaluation Department (OED) states that "In India the overall record is poor to the extent of being unacceptable."¹⁵⁰ A 1990 review, also by the OED, of the Latin American region similarly stated that it was "unable to find a single study of a Bank-financed project [in the Latin American region] which quantitatively demonstrated that a resettlement population has been adequately rehabilitated in terms of income, health or other social welfare measures." Overall, concluded the Bank's 1994 Bank-wide Review of Projects Involving Involuntary Resettlement, "the weight of available evidence points to unsatisfactory income restoration more frequently than to satisfactory outcomes."¹⁵¹

The 1994 Review, again undertaken by OED, was able to find only one Bank-funded dam – the Khao Laem in Thailand, which displaced mainly ethnic minority Karen – where the "fundamental goal" of the Bank's policy had been met and "incomes for all households rose after resettlement".¹⁵² However, the figures presented by the Bank have been criticised as misleading. Forty percent of those displaced were ineligible for compensation or had left the resettlement sites by the time the survey, on which the OED conclusion is based, was carried out. These families – which included the displaced ethnic minorities (see above) – were thus left out of the OED survey. Furthermore, 80% of the resettlers surveyed considered themselves worse off than before displacement and five years after moving to resettlement sites were still taking part in protest rallies to demand more compensation.¹⁵³

Academic studies, undertaken by University-based researchers, confirm the overall failure of resettlement schemes resulting from dam projects. Thayer Scudder, for example, states:

*"Well-designed long-term research is urgently needed. In its absence, the arguments will have to rely to a large extent on case studies. What is known from them indicates that, whether short-term or cumulative, adverse social impacts, as with environmental ones, have been seriously underestimated. When combined with adverse health impacts, it is clear that large scale water resource development projects unnecessarily have lowered the living standards of millions of local people."*¹⁵⁴

Scudder cites the Tennessee Valley as an example. According to a study by the US-based Environmental Policy Institute, despite the billions of dollars spent to develop the hydro potential of the region by the Tennessee Valley Authority (TVA), the "evidence does not support the widely held belief that the TVA contributed substantially to the economic growth of the Tennessee Valley region."¹⁵⁵ A disproportionate number of the poorest families displaced were black share-croppers: according to sociologist Nancy Grant, the racial prejudice of both the local people and the planners meant that these families experienced particular difficulties in relocation.¹⁵⁶ According to Grant:

*" . . . The large-scale displacement of farm units and the subsequent relocation of families caused severe economic problems for the families and the overpopulated area in which they were forced to resettle. The tenant and poor landowner bore the brunt of readjustment . . . TVA compensated only those who could show a direct, measurable loss; it ignored those who did not have written or formal access to the lands and refused to acknowledge the local custom of informal use of non-titled land as a means for supplementing income. Land speculators and swindlers descended on the Tennessee Valley, involving families in phoney or unprofitable investments."*¹⁵⁷

Grant concludes that overall those relocated "were worse off than they had been before the coming of the TVA": 69 per cent of the farmers in the Wheeler Dam area, for example, were resettled to inferior land.

In India, forty years after the construction of the Nagarjunsagar Dam – one of the country's largest irrigation and hydropower facilities – the nearby villages where adivasis evicted by the dam were resettled still have no roads, no power supply, no water pumps or faucets. Poverty in the area is so acute that adivasi have resorted to selling their children to earn money. According to reports in the Indian Express, ninety per cent of children being sold for adoption in Andhra Pradesh came from hamlets occupied by Nagarjunsagar oustees: with boys valued more highly, female infanticide is common, with every family in 60 hamlets surveyed reporting at least two cases of girl deaths.¹⁵⁸

Testimony to the Sri Lanka Hearings of the World Commission on Dams also highlighted the suffering of the adivasis displaced by the Bargi Dam, Madhya Pradesh, who lost not only their grazing rights (and hence their cattle) but also their right to fish the river. According to Shripad Dharmadhikary of the Narmada Bachao Andolan: “All in all, a prosperous, self-sufficient community was reduced to penury. Even starvation deaths were reported.”¹⁵⁹ Many of those resettled have now moved to nearby towns, where they labour as construction workers, rickshaw-pullers or on road building. Indian journalist Shailendra Yashwant quotes one oustee:

*“It has killed our pride, living like animals here. Our children will never believe we were once thriving farmers. All they have seen is this filthy living.”*¹⁶⁰

Other studies from India also confirm a drastic fall in living standards amongst oustees at other dams. The Tata Institute of Social Sciences, for example, has surveyed the diets of oustees from the Sardar Sarovar Dam on the Narmada River and reports that resettlement has “meant a decline in the variety, quantity and quality of food consumed”.¹⁶¹ Similarly, the Delhi-based NGO Lokayan surveyed 258 Munda, Ho and Santal households ousted by the Srisaillam Dam and found that, since eviction, the families’ incomes had declined by more than 80 per cent: average family debts had risen by more than 150 per cent.¹⁶²

In Latin America, the outcome of resettlement for ethnic minorities and indigenous peoples has been similarly negative. A submission to the Brazil Hearings of the WCD notes that the 2000 Kuna and 500 Embera Indians displaced by the Bayano Dam in Panama 30 years ago have suffered “three decades of land disputes and violence” and “a lack of adequate food, water and income”.¹⁶³ According to those affected, the government has broken agreement made with the Kuna and Embera when the dam was first built, as well as numerous agreements negotiated since then: the most important of these relate to compensation measures for the loss of traditional territories and the granting of legal titles to new lands.¹⁶⁴ The dam inundated the Indians’ coffee and cocoa crops and squeezed them up the hillsides onto less fertile lands.¹⁶⁵

Nor is this a problem of the past. Conditions among the 800 ethnic minority Nya Heun families displaced by the recently-constructed Houay Ho dam in Laos are reported to be appalling, with people suffering from a severe lack of food, a shortage of arable land and insufficient clean water.¹⁶⁶ A researcher who visited the Houay Ho resettlement site in February 1998 found “a sense of anger, frustration, and desperation among many of the Nya Heun villagers interviewed”.

The initial feasibility study estimated that three hectares of non-paddy land per family would be needed for basic self-sufficiency but noted that only one third of that amount was actually available. While provincial officials claim that there is “plenty of land” available, villagers interviewed at the site report that all they had were small plots of land adjacent to their houses. Additional land for growing coffee had been promised but this was “delayed”. No land for growing a subsistence rice crop was available and there have been reports that many families have now left the relocation site and have tried to move back to their former villages but that this will not be tolerated by the government.

A social-environmental consultant team which visited the Houay Ho resettlement site in September 1997 found that people were worse off due to the project and was very critical of how resettlement has been handled. Their trip report refers to the site as “an already serious situation of imperilled livelihood” and states that “this resettlement site appears to be a disastrous combination of too many people on too little land with too little external support.”

One elderly woman interviewed in February 1998 said,

“We don’t know . . . we feel we have been lied to . . . If we were lowland Lao it might be different but they don’t care about the Nya Heun people . . . We cannot go on like this or we will die . . . We can’t survive at Bat Chat San but we also are not allowed to return to live here . . . so we don’t know what to do . . . it will be the end of the Nya Heun people.”

Those resettled have also suffered from inadequate water supplies. Most of the wells drilled at the site are either dry or contain water of poor quality. When visited in 1997, 42 families were found to be depending on one shallow well for drinking water.¹⁶⁷

Elsewhere, in Vietnam, a joint study of those affected by the Hoa Binh Dam – mainly members of the Muong, Tay, White Thai and Black Thai ethnic minorities – also reports major post-resettlement problems, including a decline in living standards. According to the study, undertaken by the Research Institute for Asia and the Pacific (Sydney) and the Institute of Science Management (Hanoi), the dam and the wider Song Da Project of which it is part has resulted “in massive social and environmental impacts at a . . . local level.” Evacuees have insufficient land and have been forced to encroach on nearby forests, leading to “unsustainable patterns of resource use”; water shortages are serious and common; educational and health standards “appear to have suffered significantly”; and “poor diet and sanitation has led to resurgence of diseases such as dysentery and goitre.” The final irony for those displaced, says the report, is that “they are without electric light or other benefits created by the dam.”¹⁶⁸

2.1.11 The whole watershed

The loss of land and livelihoods is rarely restricted to the area flooded by a dam’s reservoir. Those living in areas slated for resettlement sites, for example, may find their land taken over to make way for oustees. Power houses, electric transmission lines, irrigation canals and other associated works cause further displacement. Land may also be lost to protected areas and reforestation schemes established to mitigate the loss of wildlife and forest caused by the construction of a dam. Typically, protected areas are also established in watershed areas to try to limit soil erosion and consequent siltation of reservoirs and so prolong the life of the dams. Areas of land alongside reservoirs may be rendered unusable for agriculture or other uses, although it may not actually be permanently flooded. Indigenous peoples and ethnic minorities living in command areas of irrigation projects also find that as land values rise, there is increasing pressure from politically connected outsiders to take over their land.¹⁶⁹ Others who live as farmers downstream of dams lose their livelihoods, which were previously dependent on annual floods to restore fertility and water supply.¹⁷⁰ Hydropower projects are often established to promote new industries, taking over further land, while roads and mines, associated with the dam projects draw in settlers who may take over tribal lands.¹⁷¹ These impacts are rarely included in initial resettlement and rehabilitation plans and development agencies have often resisted calls from environmental NGOs for basin-wide planning before individual projects are designed and funded. Yet, as the World Bank notes, ‘these regional impacts, if not well understood and planned for, can often create as many problems for indigenous and other displaced populations as the infrastructure works’.¹⁷²

An example of the forced relocation of an Indigenous People to make way for a national park established to protect the watershed of a dam comes from the Dumoga-Bone National Park in Sulawesi, Indonesia, which was considered a successful example of buffer zone management by the World Conservation Union.¹⁷³ In fact, the establishment of the Park along the watershed required the expulsion of the indigenous Mongondow people, who had been forced up the hillsides by the agricultural settlement and irrigation projects in the lowlands.¹⁷⁴

The last remnants of Sri Lanka’s aboriginal people, the Vedda, were likewise expelled from the Madura Oya National Park established to protect the catchment of the controversial Mahaweli Development Programme. Although the Vedda had been demanding rights to their lands since at least 1970, they were obliged to leave their lands with the gazettment of the Park in 1983. Brought down out of the hill forests to small settlements where they were provided houses and small irrigated rice paddies, the Vedda - traditionally hunters and gatherers supplementing their subsistence by shifting cultivation - had trouble adapting to a sedentary life. Subsequent surveys showed they resented the lack of access to forest produce, game and land for shifting cultivation and were fast losing their own language. Only one small group insisted on remaining in the forests where they were persistently harassed by officials. International

protests in support of the Vedda led to Presidential promises that some land would be set aside for them but this has been a long time coming.¹⁷⁵

The Independent Review of the Sardar Sarovar Project found that compensatory reforestation in the Narmada watersheds threatened to displace a still unknown number of adivasi. The study also found that resettlement plans and social impact studies had omitted to deal with the 800 adivasi families who lost lands to establish a new town for construction workers, the tens of thousands to be displaced to establish compensatory wildlife sanctuaries, the tens of thousands of adivasi and lower caste farmers who would lose access to resources in the resettlement area and the estimated 140,000 people (10% of them adivasis) who would be displaced by canals.¹⁷⁶

Some impacts from major projects may be felt far outside the river basin. For example, concerns were raised before construction that the Three Gorges Dam in China, which will uproot an estimated 1.5 million people, might prompt the resettlement of the Han Chinese oustees in minority areas on China's borders to consolidate central government control of border regions.¹⁷⁷ Exactly these problems are now becoming apparent. With land becoming scarce, project authorities have been encouraging displaced families to migrate to remote provinces such as Xinjiang and Inner Mongolia as members of the paramilitary Construction and Production Corps. Such colonisation programme are extremely unpopular, both with the relocated families and the host populations. In October 1998, severe tensions arose in Kashgar after Three Gorges oustees had been relocated in the area. Eight policemen were killed and the city had to be placed under curfew.¹⁷⁸ In May 1999, senior Chinese Government officials admitted that 'initial attempts to resettle displaced people in provinces like Xinjiang, Hainan, Hunan and Henan had been a failure.'¹⁷⁹

Another unforeseen problem that has had serious consequences comes from the siltation of reservoirs and the streams and rivers that feed them. As well as substantially reducing the life of the dams, siltation has caused the seasonal flooding of much larger areas than dam-builders had anticipated. Ibaloy people who have lost lands to the Ambuklao and Binga Dams in this way were for many years told that the siltation had nothing to do with the dams and were denied compensation. Only recently has the government admitted some liability for these people's problems.¹⁸⁰

A particular problem faced by Indigenous Peoples who live downstream from dams in boreal zones comes from the discharge of power-generating water on top of frozen rivers during winter. In the case of the Kolyma dams in northern Yakutia, the resulting unseasonal floods have caused high mortalities of fur-bearing animals important to the Indigenous Peoples economy, such as musquash, ermine, squirrel and small rodents.¹⁸¹

The way that large dams affect peoples' access to fisheries and water is also a major concern. In the US, the loss of water rights has now become a major issue for indigenous groups. Under the so-called 'Winters Doctrine', Indian reservations have a paramount right not simply to the water necessary to meet their present needs but their future needs as well. This right has been consistently abrogated, however, with Native Americans being denied access to the water that should flow through their reservations in favour of non-Indians. Virtually every drop of the water accruing from the Missouri River Development Project, for example, was consigned to non-Indian use. In many cases, Indians, who have often suffered great hardship as a result of the denial of their water rights,¹⁸² have had to agree to "voluntarily" relinquishing those rights in order to obtain access to the water they required to fulfil their own development plans, for instance through extending irrigation.¹⁸³

The disruption of rivers due to dams has also severely impacted the fisheries on which many indigenous groups depend and which, in many instances, play a major role in their culture. For the Yakama, Umatilla, Warm Springs and Nez Perce people of the Northwest of the US, for example, salmon remain "the core of our traditional culture and religion."¹⁸⁴ Such peoples have seen salmon runs in their region decline drastically as a result of dams converting "the free-flowing Columbia, Snake and other rivers into strings of slackwater pools unfamiliar to Indian people, inhospitable to salmon."¹⁸⁵ Before dams, say the Indians:

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“It took juvenile salmon about two weeks to travel from their home streams in the Snake River to the ocean. Now it takes about two months. Many die from added stress and disease from higher temperature and slower water as well as from longer exposure to animals and fish that prey on them. . . In the final analysis, the system of dams too hungrily consumes the benefits of the river and leaves too little to nourish salmon. Salmon do not need more gizmos at the dams or bigger and better barges; they need a fair and equitable share of the water’s wealth. . . Salmon are letting us know it is no longer possible for humans to uncompromisingly appropriate all of the river’s benefits.”¹⁸⁶

The tribes in the region are now fighting back and have instituted a salmon restoration plan, Wy-Kan-Ush-Mi Wa-kish-Wit.¹⁸⁷ Elsewhere, in Oregon, the Umatilla Confederated Tribes have filed a successful suit arguing that the Army Corps of Engineers, which constructed the Chief Joseph Dam, illegally interfered with the water flow necessary to the spawning of salmon and steelhead trout that were the basis of their economy. In this, and a similar case brought by the Colville Confederated Tribes, the court ordered the devising of a plan ‘in the public interest’ that would correct the problem. In many cases, the tribes have only won compensation or rehabilitation measures after decades of struggle. As the draft scoping paper for the WCD’s study of Grand Coulee notes the struggle for reparations has been a long one: “Both the Colville and Spokane [Native American] tribes felt they had been unfairly treated during [dam] construction. In 1951, 1975 and 1991, they took legal action against the government demanding reparations for the forced inundation of tribal lands, the loss of traditional fishing and root digging areas, the failure to honour agreements and treaties, and other ‘historical inequities’. Their main argument was that the government had never justly compensated them for their losses, despite decades old promises.”¹⁸⁸

In India, the loss of fishing rights is also a major issue. In the case of the Bargi Dam on the Narmada River, the adivasis who were forcibly relocated to make way for the dam lost their rights to fish the river when the fishing rights to the newly-created reservoir were auctioned to a big contractor: oustees could not even fish for their home consumption. Agitation by the oustees, the majority of whom are now living in abject poverty, has finally forced the Government of Madhya Pradesh to hand over the fishing rights to the reservoir and to negotiate new rehabilitation measures, including lowering the height of the reservoir in order to provide land for those relocated to cultivate until they are properly resettled.¹⁸⁹

Submissions to the WCD Hearings in Brazil have also highlighted the impacts of dams on fisheries and hence on the livelihoods. In the case of the Urra 1 project in Colombia, the Association of Producers for Communal Development of La Cienaga Grande de Lorica (ASPROCIG) reports that the dam has disrupted the migration of fish for spawning, severely affected the livelihoods of the Embera-Katio people in addition to non-indigenous peasant and fishing communities. According to ASPROCIG:

“The number of those directly affected by this problem is estimated at 60,000, about 15.4 per cent of the lower Sinu basin. Fishing production, previously estimated at approximately 6,000 tons annually has decreased to 1,700 tons.”¹⁹⁰

A problem that is only recently receiving international attention comes from growing evidence that methyl mercury is released from bacterial transformation of mercury accumulated in soils and strata underlying reservoirs, and may reach such high concentrations that reservoir fish become inedible. In Venezuela, the Guri dam which displaced two communities of Pemon Indians in the 1960s, was initially welcomed for providing an abundant new fishery for both the local *criollo* and Pemon communities. In 1986, a second stage of the dam, which obliged the Pemon to be resettled a second time, caused them to be forced to evacuate their homes before their resettlement site was prepared due to unexpected, heavy falls of rain.¹⁹¹ Then, during the mid-1990s, researchers found that methyl mercury levels in the reservoir had become dangerously elevated and the government was obliged to ban the consumption of the main commercial species being fished in the reservoir.¹⁹²

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A similar problem has affected the Cree living near the La Grande reservoirs in Quebec. As fish are a major part of the local Cree diet, mercury levels in their bodies have risen dangerously. By 1984, six years after La Grande complex was completed, mercury levels in pike and walleye, two fish species important in the Cree's diet, had increased six-fold and 64% of Cree living on the La Grande estuary had blood mercury levels far exceeding the World Health Organisation tolerance limit.¹⁹³ [Since then, as one outcome of the James Bay agreement, steps have been taken to better understand and address this problem. According to Hydro-Quebec] While research [has] showed that high concentrations of mercury were found in Cree blood samples before the reservoir was filled, it is clear that the reservoirs have made the situation worse. Hydro-Quebec thus made an agreement with the affected Cree to compensate them for this serious problem and an emergency programme was put in place, which consisted of regular monitoring and an intensive campaign to persuade the Cree not to eat fish from the reservoirs.¹⁹⁴ By 1993-4 measures to limit contaminated intakes had brought mercury concentrations in the Cree down to 11.5% of all tested individuals in nine affected communities, with much lower rates being recorded in women of child-bearing age.¹⁹⁵ However, the social impacts were substantial. Since the Cree rely on fish for sustenance during hunting and trapping activities, the mercury problem discouraged these activities and has led to an increasingly sedentary lifestyle. Accompanying dietary changes have contributed to significant increases in obesity, cardiovascular disease and diabetes, previously virtually unknown.¹⁹⁶ In the opinion of many Cree, the message of the information campaign that 'country food' is bad for you drove a wedge into their identification with their land, with significant cultural repercussions.¹⁹⁷

2.1.12 Inadequate processes of restitution

A particular problem highlighted by the participants at the WCD Joint Consultation on '*Dams, Indigenous Peoples and Ethnic Minorities*' in Geneva in July 1999, is the absence or failure of mechanisms to retribute Indigenous Peoples and Ethnic Minorities for past losses and injuries done by dams. The Ibaloy people displaced by the Ambuklao and Binga dams on the Agno River in the Philippines had to wait nearly 25 years before their appeals for assistance with resettlement were given any kind of attention. The subsequent failure of resettlement efforts to restore a decent standard of living led to further complaints but it was not until the government set in motion plans to build the San Roque dam in the same area that a 'Claims Committee' was established to deal with the complaints of those affected by the previous projects. The people had had to wait forty years before an official body would even hear their claims for restitution. Since the Committee was set up, its slow pace of settling claims has been a source of further problems.¹⁹⁸

The plight of the Maya Achi displaced by the World Bank-funded Chixoy dam also illustrates this problem. Although over 400 members of the affected communities were killed by government-directed forces in order to overcome their resistance to the dam in the early 1980s, it was not until 1996 that the World Bank undertook a programme to rehabilitate the affected people. Considerable problems have since been incurred in actually implementing this plan, the most serious complaint coming from the 44 families of orphaned descendants of those killed in the 1980s who have been denied land as compensation for ancestral lands lost. In all, the resettled Maya Achi claim that they have now been resituated with lands less than a third of the extent of their original cultivation's and replacement housing is of a very poor quality. Compensation for the suffering they have endured over the intervening years has not been forthcoming.¹⁹⁹

2.1.13 Underlying Causes of Negative Impacts

Given the seriousness of the impacts of large dams on Indigenous Peoples and Ethnic Minorities and the fact these problems persist even when international laws and development policies have been modified to address them, it is necessary to look beyond procedural remedies to identify the underlying causes of the problems.

This review of the case literature and subsequent analysis suggests that underlying the failure of governments and project developers worldwide to respect the law and follow their own procedures are a range of institutional, structural and political factors that undermine the bargaining power of Indigenous Peoples and Ethnic Minorities and reinforce their marginalised status within society. Such factors include:

- Denial of the right to self-determination.
- Deep-seated structural inequalities of power between ethnic minorities, indigenous peoples and the wider society in which they live, including racism and other institutionalised forms of discrimination;
- A variety of everyday institutional practices – from cost benefit analysis to national planning – that reinforce the marginalised status of indigenous peoples and ethnic minorities and which depoliticise the resource and other conflicts that arise from dam-building;
- The institutional priorities and internal career structures of implementing agencies which frequently lead to a “pressure to lend” regardless of social and environmental costs;
- The lack of accountability of planners and implementing agencies to affected peoples;
- The tendency of hydro-based development strategies to reinforce inequitable access to both resources and decision-making.

Such circumstances make it much harder for well-meaning policies and standards to have effect.

2.1.14 Denial of the right to self-determination

For Indigenous Peoples and Ethnic Minorities, the fundamental reason that dam-building so often causes them problems, is that their right to self-determination is not recognised. Consequently they are neither treated as equal partners in proposed dam-building projects, nor provided means to negotiate mutually acceptable solutions. No effort is made to seek their prior and informed consent to either the overall project or, sometimes, even specific components, such as resettlement. Their right of veto is denied. This fundamental imbalance of power underlies many of the other problems that follow.

2.1.15 Social Exclusion

One of the other most obvious reasons that the rights and interests of Indigenous Peoples and Ethnic Minorities are excluded in dam-building is because the processes of social exclusion are in any case deeply nested in the dominant society. Some of this discrimination results in the prejudices and stereotypes of national society. In Rwanda and Burundi, for example, among the Hutu and Tutsi majorities it is commonly held that drinking from the same cup as a Twa (pygmy) is polluting.²⁰⁰ In India, similarly, Hindu beliefs instill the notion of ‘untouchability’.²⁰¹ Such racial and ethnic prejudices are deeply rooted and widely documented.

In some countries these kinds of prejudices are institutionalised. For example in Thailand, many indigenous people lack citizenship cards and are thus not able to claim the benefits accorded Thai citizens, vote or get title to their lands.²⁰² The pervasive problem caused by the lack of recognition of land rights has been noted above.²⁰³ Internationally, a number of governments still seek to deny that emerging international standards on Indigenous Peoples apply in their countries, among the most vociferous at the United Nations Human Rights Commission being Bangladesh, India, Malaysia, Japan and China. Other countries, like France, deny that they have minorities at all.²⁰⁴

Where countries do have favourable policies towards Indigenous Peoples and Ethnic Minorities, controversy often arises about exactly which peoples should be beneficiaries. In India, for example, the transhumant pastoralist Van Gujjars, who face displacement from their wintering grounds in the Shivalik Hills and who seek the protections offered by the International Labour Organisation, are not classified as a Scheduled Tribe by the Indian Government. In Brazil, the Quilombo, descendants of

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escaped slaves who re-established autonomous African societies in the forested interior, some of whom are now being moved to make way for dams, complain that they are treated even worse than Indians, whose lands are at least protected by the Constitution and through the establishment of Indian Areas, Reserves and Parks.²⁰⁵

National policies of cultural assimilation deny ethnic diversity and deny Indigenous Peoples and Ethnic Minorities the right to teach, write or even speak their own languages – as with the Kurds in Turkey for example. In Indonesia, an explicit policy of assimilating so-called ‘isolated and alien peoples’ (*suku suku terasing*) into the national mainstream, includes practices of forced resettlement, the dismantling of longhouses, the burning of traditional religious paraphernalia and the colonisation of Indigenous Peoples’ lands with settlers from the Inner islands. The aim, noted the Minister of Transmigration in 1985, is that “different ethnic groups will in the long run disappear because of integration . . . There will be one kind of man.”²⁰⁶

2.1.16 National planning and marginal voices

Since they are denied equal access to decision-making and their cultures and traditional systems are devalued, national development planning frequently excludes Indigenous Peoples’ and Ethnic Minorities’ voices and concerns. National water use and energy development plans tend to be centralised planning exercises based on national statistics and computer-generated predictions of population increase, industrial expansion and urban consumption patterns. Local visions, rights and priorities are often excluded from such plans as details ‘to be dealt with at the implementation level’ or because Indigenous Peoples and Ethnic Minorities are considered obstacles to development.²⁰⁷

Top-down planning of this kind, leads to decisions being imposed on people without their involvement. Indigenous Peoples have long spoken out against such an approach. As Ailton Krenak of Brazil told the World Commission on Environment and Development:

*“The only possible place for the Krenak people to live and to re-establish our existence, to speak to our Gods, to speak to our nature, to weave our lives, is where God created us. We can no longer see the planet that we live upon as if it were a chess-board where people just move things around.”*²⁰⁸

International development agencies frequently exacerbate this process by excluding consideration of Indigenous Peoples and Ethnic Minorities rights and interests in Country Assistance Strategies, Structural and Sectoral Adjustment Programmes and Sectoral lending.²⁰⁹

A further problem arises from the tendency, noted by many academic commentators, for planners to define problems in ways that fit the macro-economic solutions that planning agencies are equipped to provide. For example, in the course of justifying their promotion of agricultural markets in Lesotho, World Bank officials and consultants have claimed that the country has a “subsistence-oriented society virtually untouched by modern economic development” and that 85 per cent of its inhabitants make a living as farmers. The proposed solution, not surprisingly, was to modernise the agricultural sector. In fact, as standard histories document, Lesotho has participated in regional labour, cattle and agricultural markets for more than a century, while its inhabitants derive the crucial part of their income as migrant labourers in South Africa, with only six per cent of average rural household income deriving from domestic crop production.²¹⁰

The WCD joint consultation on ‘*Dams, Indigenous Peoples and Ethnic Minorities*’ held in Geneva in July 1999, also drew attention to the way dam building is increasingly driven by regional economic planning processes. The meeting noted that the Epupa dam in Namibia, the Bakun dam in Sarawak, the Bio Bio dams in Chile, and the projects of Hydro-Quebec in Canada were all being promoted with the aim, at least in part, of feeding electricity into regional power grids. In some cases, these development plans are explicitly linked to the regional energy policies of trading blocks such as NAFTA, APEC and Mercosur. No consideration is given to the rights of Indigenous Peoples and Ethnic Minorities in this kind of macro-economic planning nor are the negotiations open to representatives of these peoples.

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2.1.17 Costs, benefits and local values

In planning large-scale projects and in order to justify the exercise of eminent domain, planners of large-scale dams make great use of cost-benefit analyses in order to show how projects will be in the 'public interest' and are worthy investments. Indigenous Peoples have been openly critical of the limitations of such an approach.

For example, the expectation on the part of planners that a financial value can be put on land, ancestral graves or ceremonial artifacts that might be lost to a dam is often met with dismay by Indigenous Peoples and many Ethnic Minorities. For them, many of the losses which are incurred as a result of a dam being built simply cannot be valued in financial terms. As the Ibaloy comment on their ancestral graves:

*"It is not easy to destroy our sacred burial grounds. It is our community faith that our beloved dead, most especially our ancestors, are resting in peace in our ancestral land. We believe they are with us in their spirit as we are with them in our traditional and cultural values. That is why no amount of money will constitute a just price for their sacred graves."*²¹¹

Similarly, the Yavapai of the Fort McDowell Indian Reservation Arizona refused point blank to put a price of their land that would be lost to the Orme dam, planned as part of the Central Arizona Project, rejecting out of hand a \$40 million compensation scheme offered by engineers of the Bureau of Reclamation. "The land is our mother", said one Yavapai teenager in 1981 "You do not sell your mother." It was a response which officials from the Bureau of Reclamation "found baffling". Yavapai leaders, meanwhile, were "annoyed that [the] engineers had even bothered to make the trip." As Wendy Espeland of Northwest University reports in her study, *The Struggle for Water*:

*"Orme dam was needed, [the Bureau of Reclamation] believed, to regulate and store water, generate hydropower and protect Phoenix from floods. The Yavapai saw things differently. They did not understand why they should bear the costs of others' mistakes; of building houses in the floodplain; of growing thirsty cotton in the desert; of stopping rivers so that Phoenix could grow its unplanned, ugly sprawl and residents could keep watering into oblivion the desert that first drew them there. Nor did the Yavapai believe that it was their right to sell the land, the last bit linking them to their ancestors, land they believed was sacred."*²¹²

Although they did not use the term, the Yavapai viewed land, in the words of Espeland, as "an incommensurate value, and money and other land, regardless of the amount could not capture its value or compensate for its loss." As one teenager put it: "If we took the money, we could not be ourselves . . . and we could not live with ourselves."²¹³ The Yavapai, however, have difficulty in even explaining to supporters of the Orme Dam why their land was, in effect, incommensurable. There was simply no language in which they could express their feelings. Analogies — for example, likening the sale of their land to the sale of their children — were "often misunderstood . . . as sarcasm or exaggeration", and were rejected by Orme supporters as inappropriate: "land could not . . . be valued as children . . . and it was not unique in ways that precluded it being priced."²¹⁴

Unsurprisingly, the Yavapai's refusal to price their land undermined the entire rationality of the Bureau of Reclamation's cost-benefit studies. Whilst, for officials of the Bureau of Reclamation, such cost-benefit analysis and contingent valuation were means of framing negotiations over acceptable terms for building the dam, to the Yavapai, they were an affront — and one, moreover, that distracted people "from the real and relatively straightforward stakes of the decision." As one elder expressed it: "White men like to count things that aren't there. We have a way of life that will be destroyed if that dam comes through. Why don't they just say that?"²¹⁵

A comparable experience comes from Australia. Commenting on attempts to put a price on Coronation Hill, a part of the Kakadu Conservation Zone in Australia, an area which for the Aboriginal people is a sacred site containing their dead ancestors, a leading academic critic of cost-benefit assessment (CBA) notes:

“No matter how well-intentioned, the Australian Resource Assessment Commission might have been in asking how much people would be willing to pay to stop the mining in the area and preserve the conservation zone, the question is inappropriate. To approach the issue through CBA – in particular to insist that there must be some price people would be willing to pay to forgo a good to which they are committed . . . – is . . . to abandon all neutrality and to attempt to corrupt the relationships constitutive of a culture.”²¹⁶

The cost-benefit approach may not only inappropriately put financial values on ‘costs’, it may also invoke benefits which the affected peoples may dispute. For example, on being told by the Chief Engineer of Eletronorte that the proposed Altamira project, involving a series of dams on the Xingu river, would “be in your interest....They will bring progress”, a Kayapo woman responded:

“We don’t need electricity. Electricity won’t give us food. We need the river to flow freely. We need our forests to hunt in. We are not poor. We are the richest people in Brazil. We are not wretched. We are Indians”.

In a more philosophical vein, the International Indian Treaty Council, a non-governmental organization of indigenous peoples, has stressed the gulf between the way in which land is viewed by indigenous peoples and way land is valued and costed by planners:

“The philosophy of the indigenous peoples of the Western hemisphere has grown from a relationship to the land that extends back thousands of years... This philosophy is profoundly different from the predominant economic and geopolitical ideology which governs the practices of the major industrial powers and the operations of transnational corporations. Its chief characteristic is a great love and respect for the sacred quality of the land which has given birth to and nourished the cultures of indigenous peoples. These peoples are the guardians of their lands which, over the centuries, have become inextricably bound up with their culture, their identity and survival. Without the land bases, their cultures will not survive.”²¹⁷

In the case of the Volta Dam, for example, the resettled were incorrectly referred to as subsistence farmers, with low levels of productivity which contributed little to the national development effort. As for their land, 94 per cent was considered to be either unoccupied or unsuitable for agriculture. Defined in this way, the “idea emerged that by virtue of their backwardness, the resettled deserved their fate.” In fact, some 80,000 people lived in the affected area and their agriculture was far from “subsistence”.²¹⁸ This is not a problem that belongs to the past. To justify the claim that the Sardar Sarovar Project in India would bring water to villages without water, for example, the World Bank inflated the number of villages that would, in theory, benefit from the project, including inventing villages that do not exist.²¹⁹

In effect, cost-benefit analysis does more than force the valuation of what cannot be valued. It depoliticises the debate over dams and water policy — in ways that further marginalise already marginalised people within society. Indigenous Peoples and Ethnic Minorities, whose values may differ considerably from the mainstream, are in a particularly vulnerable position in this regard.²²⁰

Even where strong efforts are made by planners to ensure that Environmental Impact Assessments do take into consideration the full range of impacts and concerns, there are huge difficulties in getting agreement on project’s benefits.

For example, in the light of the Crees’ unfortunate experience with mercury contamination following the La Grande developments, the environmental assessment regime set up for Hydro-Québec’s proposed Great Whale (Grand Baleine) project went to great lengths to be complete. *Guidelines,*

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issued by the review bodies set up by the James Bay and Northern Quebec Agreement and by the federal environmental assessment regime, called for a ground-breaking Environmental Impact Surveys (EIS) based on the principles of sustainable development, on “the rights of local communities to determine their future and their own societal objectives,” and on:

*respect for the right of future generations to the sustainable use of the ecosystems within the proposed project area, both for the local population and for society as a whole. This involves preserving the region's flora and fauna, maintaining the quality and capacity of ecosystems and their renewable resources, preserving unique and remarkable sites, conserving cultural diversity, and maintaining and improving the quality of life in the region.*²²¹

*It was to take into account indigenous knowledge, culture and values, as well as the project's justification, based on a detailed examination of need and alternatives.*²²² *Externalities were to be dealt with qualitatively, avoided the pitfalls of trying to monetize impacts and reduce the problem to a simple cost-benefit analysis.*²²³

Unfortunately, Hydro-Québec was not able to adhere to these guidelines. Official review bodies found that the voluminous EIS submitted by the company:

*“suffer[ed] from a number of major inadequacies which prevent a clear definition and prediction of the repercussions of the proposed project to the extent that it becomes extremely difficult to adequately estimate its real costs and benefits. ... As submitted by the Proponent, the EIS is presently neither sufficiently complete nor adequate for the decision-making process.”*²²⁴ (emphasis in original)

*Major inadequacies which affect the analysis of the impacts are: an inadequate knowledge of the human societies, an inadequate approach regarding the combined and integrated effects of the proposed project and an inadequate appreciation of the uncertainty associated with the project's impacts. ... With regard to the biophysical environment, the EIS does not recognise the existence of distinct ecosystems within the study area, their structure and function, or the processes and interrelationships which constitute ecosystem health.*²²⁵

As a result, the review bodies found the EIS inadequate to permit a reasoned judgement on the project's justification:

*The justification of the proposed project involves, first, assessing the need for additional energy resources, and then comparing the various supply-or demand-side resources that could be developed to satisfy it. A least-cost analysis was to demonstrate that the best solution for meeting the anticipated demand growth includes the Great Whale project, not only for the demand growth scenario judged most likely, but also for other plausible scenarios. Moreover, the Proponent was to provide a comparative analysis of the externalities of the different energy resources available, on a quantitative basis, insofar as possible, or on a qualitative basis, where not possible. These analyses are not developed to a sufficient degree in the EIS to permit evaluation of whether or not the conclusions are well founded.*²²⁶

The very day after the release of this damning report, the Quebec Premier announced that the project would be shelved.²²⁷

2.1.18 Engineering consent

Even where it is national policy to involve affected communities in dam-building projects, the obstacles to effective participation are manifold. In the case of the Bakun dam, for example, Dayak peoples were provided minimal information about the project, access to the Environmental Impact Assessment was denied and when they objected to the proposed resettlement plan they were

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denounced as being ‘anti-development’. Dayak leaders had their passports taken away to prevent them travelling overseas to speak out against the project and NGOs supporting the indigenous communities suffered harassment and repression. Lawyers from Peninsula Malaysia acting for the affected people were denied access to the State. Communities were threatened with withdrawal of State benefits and services if they persisted with their opposition. They were obliged to sign contracts accepting the relocation, in order to get new housing and land in the resettlement area. Dissent was quashed.²²⁸

The James Bay Cree state that they negotiated the James Bay and Northern Quebec Agreement of 1975 under the duress of continuing destruction of their lands and the courts’ and governments’ refusal at the time to acknowledge their aboriginal and constitutional rights. As evidence of this duress, they point to articles in the Agreement, insisted upon at the time by Hydro-Quebec, that provide that the Crees shall in the future not raise sociological impacts on their people as grounds for opposition to further hydro-electric projects in their lands. Prof. Peter Cumming of York University describes the agreement as “a forced purchase,” and the Canadian Royal Commission on Aboriginal Problems and Alternatives wrote that:

“... it would be most difficult to avoid the conclusion that the Aboriginal parties ... were repeatedly subjected to inappropriate, unlawful coercion or duress. ... These actions were incompatible with the fiduciary obligations of both governments and substantially affected the fundamental terms of the ‘agreement’ reached” (and see box).²²⁹

Box 2.1: Cree Statement to the World Commission on Dams

CREE STATEMENT TO THE WORLD COMMISSION ON DAMS

Even after the James Bay and Northern Quebec Agreement (JBNQA) was signed in 1975, Hydro-Québec obtained a series of further concessions from us, under circumstances in which we could not refuse. For example, it became clear while the La Grande project was under construction that erosion from the drastically increased flows in the La Grande River would threaten the safety and well-being of the community of Fort George, located on an island at the mouth of the river. The only solution was to relocate the community to the mainland. However, Hydro-Québec refused to recognise its obligation to pay for this relocation as mitigation of the impacts of the project. Instead, it demanded in exchange our permission to relocate the future LG-1 dam site from mile 45 to mile 23 above the estuary, a proposal that we had rejected in the original negotiations leading to the JBNQA. The closer location would provide greater head, and thus greater power benefits to Hydro-Québec, but would also result in substantially greater impacts on the Cree, due to the flooding of the first rapids and the loss of territory intensively used for hunting and trapping. The change also increased the flow impacts downstream. We had no choice but to accept this modification in order to guarantee the safety of the Fort George community.

More recently, Hydro-Québec sought to engineer our consent for the Great Whale project, first by arguing that they had already agreed to it in the James Bay Agreement, and then by insisting (with the agreement of the governments of Quebec and Canada) on splitting the project in two. The idea was to start construction of the many new roads and airports needed in order to build the project, well before the environmental assessment of the dams themselves could take place, thus allowing a repeat performance of the “balance of convenience” argument that had been so effective 15 years earlier. We challenged this move in Federal Court, claiming it was an attempt to side-step the environmental assessment regime set up by the James Bay Agreement. The Court found in our favour, opening the way to an integrated Environmental Assessment process.

We also maintain that Hydro-Québec’s recent behaviour demonstrates that it still considers it proper to attempt to engineer the consent it claims to require. Hydro-Québec has chosen to negotiate directly with local Band Councils, rather than with the Grand Council of the Crees. This fit nicely with the policy of the Quebec Government to deal with communities and not with the larger political

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organisations of aboriginal peoples in their dealings with them. However, it is not up to Hydro-Québec or to the Province of Quebec to determine the modalities by which the Cree Nation will give or withhold its consent for a major hydro project. The Cree Nation has elected the Grand Council by universal suffrage and mandated it to represent them in precisely these situations. Hydro-Québec's unilateral decision to negotiate with local Band Councils rather than with the Grand Council itself is thus a bald-faced attempt to engineer consent for new megaprojects on Cree territory.

To implement this strategy, Hydro-Quebec initiated a series of meetings with the chiefs and councils of individual communities to be impacted by the proposed Rupert Diversion and the Great Whale River Diversion projects. ... With the offer of money, equity involvement in the project and future jobs (the last two of which Hydro-Quebec had failed to deliver on the 1975 project), Hydro-Quebec tried to kindle the hopes of the community leadership.

In 1999 the Cree people spoke, in the community elections. Three chiefs who had been vocal advocates of participating in the discussions with Hydro-Québec were replaced by outspoken critics of the HQ proposals. Two others who had promoted Hydro-Québec's community-by-community approach were also voted out. The Hydro-Quebec strategy of divide and conquer had failed.²³⁰

Milder forms of engineered consensus are very prevalent. Scudder notes that, in Botswana:

*“government presents its use of customary meetings (kotla), at which local people discuss vital issues with their leaders, as a form of local participation. In connection with the Southern Okavango Integrated Water Development Project, however, such meetings were used more to inform local people of the government's intentions, and to solicit their reactions to those intentions, than to actually involve them in the planning process.”*²³¹

The WCD joint consultation on ‘Dams, Indigenous Peoples and Ethnic Minorities’ held in Geneva in 1999, heard a number of complaints about Government manipulation of the consultation process to try to engineer the result that they sought. A spokesperson for the Himba pastoralists, threatened with the loss of core parts of their grazing lands to the Epupa Dam, noted how the government was attempting to gerrymander administrative and electoral boundaries in the area and thus overcome resistance. In 1997, heavily armed Namibian police attempted to prevent the Himba speaking to their lawyers and only after the latter obtained a court order from the High Court were the people able to meet their legal advisers again without fear of harassment and intimidation. Similarly, the meeting heard how in Manitoba in Canada, government agencies had changed the rules for voting in communities to ensure consent to rehabilitation packages linked to the Churchill-Nelson River Diversion Project. Pressure has likewise been placed on the Pewenche people to accede to the Ralco dam on the Bio Bio river in Chile. The Ralco dam is now under construction even though the project still lacks the authorisation of the government agency responsible for indigenous affairs. Two [of] directors of the agency have been threatened with dismissal since they oppose the resettlement plan.²³²

2.1.19 The Pressure to Lend

The problem of abbreviated participatory procedures is very widespread. It is exacerbated by deep-seated institutional pressures on the staff of multilateral development banks to “deliver” projects. As a 1992 report by the World Bank's Portfolio Management Task Force, led by Willi Wapenhams, makes clear, the Bank's “pervasive preoccupation with new lending” takes precedence over all other considerations.²³³ According to the Task Force, “a number of current practices – with respect to career development, feedback to staff and signals from managers – militate against increased attention to project performance management.”²³⁴ In the subculture which prevails at the Bank, staff appraisals of projects tend to be perceived “as marketing devices for securing loan approval (and achieving personal recognition)”, with the result that “little is done to ascertain the actual flow of benefits or to evaluate the sustainability of projects during their operational phrase.”²³⁵

The Bank's institutional priorities and management structures have thus encouraged staff to flout internal policy directives and borrower governments to ignore loan conditions. Unsurprisingly, the "credibility [of loan agreements] as binding documents has suffered"²³⁶ and "evidence of gross non-compliance [with Bank legal covenants] is overwhelming."²³⁷ When borrowers disregard loan conditions, the typical response of Bank management has been to look the other way or waive the relevant requirement, unless public pressure forces them to do otherwise. As Patrick Coady, an ex-Executive Director of the World Bank, has remarked: "No matter how egregious the situation, no matter how flawed the project, no matter how many policies have been violated, and no matter how clear the remedies prescribed, the Bank will go forward on its own terms."²³⁸

2.1.20 Lack of Accountability

Other institutional problems compound this problem. Neither individual project staff nor the institutions that they work for are in any real sense accountable to the local communities. Large-scale dams tend to be implemented over decades but, typically, staff in government institutions, private companies, consultancies and banks may only work on any one project for a few years or even a few months – often only a few weeks or days in the case of consultants on short-term contracts to assess issues such as social impacts. Yet the contents and consequences of their reports and decisions may not show up until months or years later.

This might not matter so much if the institutions themselves were in some way legally obligated to the affected communities but in fact, grievance procedures are often unwieldy or absent, opportunities for legal redress tortuous and responsible institutions remote. Enforceable contracts between dam builders and oustees, whether indigenous or not, are the exception not the rule.²³⁹

2.1.21 The privacy of private financing

This problem is likely to become more, not less, acute as the financing, building and operation of dams moves to the private sector.²⁴⁰ Already many private-sector funded projects are eschewing support from the main lending windows of agencies such as the World Bank because the environment and development standards required by the Bank are considered too onerous. Instead, companies are turning to publicly-backed Export Credit and Investment Insurance Agencies (ECAs) to guarantee their investments and thus ease the task of raising private sector financing.

Such ECAs are now financing (or considering financing) a number of major hydro projects around the world, including the San Roque Dam in the Philippines, the Three Gorges Dam in China, the Ilisu Dam in Turkey and the Maheshwar Dam in India. A major attraction for industry of ECAs is that, almost with rare exceptions — the US Export-Import (Ex-Im) Bank and the US Overseas Private Investment Corporation (OPIC) being cases in point — they have no mandatory human rights, environmental and development standards: they also have a secretive institutional culture. In Britain, for example, the UK Export Credits Guarantees Department ECDG is required under the 1991 Export and Investment Guarantee Act to take account of all economic and political factors that might adversely influence a loan. It has no legal obligation, however, to consider the environmental impacts of its investments or the contribution they will make to development; no obligation to ensure that all its projects comply with a set of mandatory human rights, environmental and development guidelines; and no obligation to screen out projects with adverse social and environmental impacts.

There are no formal policies, for example, that require environmental impact assessments for ECDG-backed projects or export deals; no requirements to ensure that rigorous safety measures and emergency accident response plans are in place for projects involving hazardous facilities, such as nuclear power or chemical plants; no requirements to ensure that those forcibly evicted as a result of a project will be adequately compensated and resettled; no requirements to consult with local people or concerned non-governmental organisations; no requirements to release documents that are relevant to assessing the social and environmental impacts of a project; no requirements to give timely advance

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notice of upcoming projects so that affected peoples can voice their concerns and objections; and no requirements to publish details of funded projects.

The ECGD is not required to follow even the World Bank's (weak) guidelines for screening and monitoring projects, nor the guidelines recommended by the Development Assistance Committee of the OECD, nor the guidelines drawn up by the OECD to influence the conduct of multinational companies. Although, in some instances (and generally only as a result of public pressure), environmental and social factors are taken into account in this underwriting process, the risks assessed are those posed to the financial and political viability of the project, not the risks that the project poses to the environment and to people.²⁴¹

2.1.22 Social Engineering for Development:

Although, from a neo-classical economic perspective, conventional top-down development has delivered measurable gains for many groups,²⁴² such gains should be seen in a wider context. The gains made by some groups are frequently to the cost or exclusion of others.

Historically, the creation of a global economy and its accompanying industrial infrastructure has only been possible through dismantling local cultures and reassembling them in more 'modern' forms. Indeed, in some quarters, such dismantling has been openly promoted as policy. As one development analyst commented in the 1960s:

*"Economic development of an underdeveloped people by themselves is not compatible with the maintenance of their traditional customs and mores. A break with the latter is prerequisite to economic progress. What is needed is a revolution in the totality of social, cultural and religious institutions and habits, and thus in their psychological attitude, their philosophy and way of life. What is, therefore, required amounts in reality to social disorganisation. Unhappiness and discontentment in the sense of wanting more than is obtainable at any moment is to be generated. The suffering and dislocation that may be caused in the process may be objectionable, but it appears to be the price that has to be paid for economic development: the condition of economic progress."*²⁴³

Likewise, Etounga-Manguelle, ex-staffer of the African Development Bank, believes fundamental changes in African cultures are required before the continent can benefit from modern development planning.²⁴⁴ A similar view has been expressed more recently in a paper prepared by Kenichi Ohno of Saitama and Tsukuba Universities, Japan, for input into the World Bank's 1997 World Development Report. The paper, which "summar[ises] current discussions taking place among official and academic researchers responsible for Japanese aid policy", argues that "market thinking" is "not ubiquitous in human society" and must therefore be instilled if it is to be practised. The process of economic development - or, as Ohno terms it, "systematic transition" - is thus

*"a deliberate attempt, perhaps only once in the history of any country, to implant a system from without that does not arise automatically from within the existing society."*²⁴⁵

The implications for Indigenous Peoples and Ethnic Minorities could not be more stark.

2.1.23 Dam-building and equity

Dam-based development strategies have contributed to this multi-faceted process of exclusion in a number of significant ways. For example, the financial packages, engineering expertise and organisational capacity required to construct large dams has privileged certain types of expertise and centralised institutional power over others. As a result, many alternative approaches to water

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development - including a range of water harvesting and irrigation technologies developed by indigenous peoples and ethnic minorities - have been overlooked, downplayed or dismissed by planners. In India, for example, many villagers now face water shortages because their local village tanks have fallen into disrepair, in part because state bureaucracies have preferred - for institutional reasons - to fund centrally-managed water supply systems (using large reservoirs) in preference to funding the upkeep of tanks.²⁴⁶ In the same way, the emphasis on engineering and economic considerations in dam building has diverted attention away from environmental and social considerations – whereas they should be treated as fundamental parts of dam planning equal to technical design.²⁴⁷

Dam-based development strategies have also played a significant role in restructuring food production, consumption and distribution patterns - for example, through promoting a shift from production for local consumption and marketing to production for export in order to earn the foreign exchange to pay for irrigation schemes.²⁴⁸

In addition, the large sums of money involved in building individual dam projects, coupled to the development of elite patronage networks associated with the awarding of contracts, has not only encouraged corrupt practices but has reinforced political structures that privilege certain classes, ethnic groups and commercial interest over others.²⁴⁹

3. Towards ‘Best Practice’

‘The Committee calls in particular upon States parties to....ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.’²⁵⁰

3.1 Affected communities: the importance of organising

The ability of indigenous peoples and ethnic minorities to exercise control over the decision-making processes that affect their lives and livelihoods is key to the successful outcome of any development projects that might affect them. In the case of water projects, both the literature and submissions of stakeholders make it clear that projects “succeed” only where affected communities have been able to determine their design, operation and implementation. A case in point is the Baliraja Dam in India: as Enakshi Thukral points out, the dam, which involved no resettlement and was just 4.5 metres high, worked precisely because it was “the result of the people’s own initiative”. It was “their solution to their problem”.²⁵¹

Where gains have been made, they have been achieved largely through resistance to official proposals, rather than as a result of compliance with them – and were rarely intended outcomes of the planner’s plans.

Building new institutions based on cultural traditions may be a key part of successful organising. For example, opposition to the Chico dams in the Philippines was organised around the revival of the Kalinga institution of the *bodong* or ‘peace pact’ by which, in the past, warring communities would establish peaceful relations to allow trade with the lowlands²⁵². To confront the dam, the *bodong* was extended over a very wide area, even beyond its original extent, so that it came to embrace a major part of the central Cordillera of the island of Luzon.²⁵³

Nahua Indians Marcelino Diaz de Jesus and Pedro de Jesus Alejandro of Mexico recount similar lessons from their successful struggle against the San Juan Tetelcingo Dam on the Upper Balsas river. The first the Nahua learned of the dam was when, in 1990, they noticed surveyors crossing their lands and fixing markers against the expected flood levels of the impoundment. At the time the Nahua were not organised and Diaz and de Jesus believe that, were it not for the heightened awareness about indigenous rights in the continent in the years preceding the celebrations of 500 years since Colon’s ‘discovery’ of the Americas, they might never have had the courage to oppose the dam. The approach of this event, the increased public sensitivity to environmental issues preceding the Rio Summit and the Nahua’s discovery of international standards recognising their rights, notably ILO Convention 169, emboldened them to oppose the government’s plans. By dint of creating a Council of Nahua Peoples of the Upper Balsas, through letter writing, lobbying, demonstrations, media work and a historic march to the capital city in defence of their rights, they were able to swing public sentiment in their favour and oblige the President to cancel the dam.²⁵⁴

Moreover, the record clearly shows that where resettlement is accepted by a community, strong community organisation is key to obtaining the best possible terms and to ensuring that rights guaranteed to indigenous groups and ethnic minorities under national and international legislation are respected. Using compensation monies to build up strong indigenous organisations is likewise considered part of ‘best practice’ by Hydro-Quebec.²⁵⁵

Political pressure – rooted in strong community organising - has also proved the key to opening up discussions on reparations for damage done by past dams. In Madhya Pradesh, for example, the authorities are now considering reparations for oustees of the Bargi Dam. However, as Shripad Dharmadhikary of the Narmada Bachao Andolan notes, this has only been achieved through four

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years of protest by oustees.²⁵⁶ Others note that where consultation has taken place, it is generally as a result of affected communities demanding that their voices be heard.²⁵⁷

Likewise, in the US, political organising – including direct actions and legal cases – has been key to Native Americans regaining their full water rights. In the early years, tribal acquiescence to dams was not hard to get. Unaware of their legal rights and untrained to use the courts, tribal elders felt unable to oppose government pressure. For example, tribal elders felt forced into agreeing to their resettlement to make way for Garrison Dam on the Missouri. The reservoir displaced 80% of the Mandan, Hidatsa and Arika peoples and has been blamed for the consequent high levels of unemployment among those relocated.²⁵⁸ By the 1970s, however, peoples like the Yavapai were far better aware of their rights and were able to hold their ground.²⁵⁹

As Guerrero notes of the strategies employed by groups seeking redress:

*“This social ferment [of the early 1970s] coincided with the maturation of the first generation of American Indian political strategists and attorneys ready, willing and able to engage in a sort of policy making and juridical ‘ju jitsu’ with the ‘rules of the game’ enunciated by Congress and the federal courts. Not just Treaty rights, but statutes like the Clean Water Act, Resource Conservation and Recovery Act and the Safe Water Drinking Act were therefore brought increasingly to bear in litigation and negotiation of indigenous water rights. Similarly, beginning in 1977, Native Americans began to gain increasing access to international forums such as the United Nations, through which new and sometimes effective sorts of pressure can be brought to bear upon the US. All of this added up, between 1965 and 1980, to a radical alteration of the context in which indigenous water rights were pursued.”*²⁶⁰

Indian groups in the US are now reasserting their rights and seeking compensation in the courts (see above). Indeed, the struggle over water rights has been described as “the last chapter in the Indian wars.”²⁶¹ As Madonna Thunderhawk, a Hunkpapa Lakota AIM member, one of the group that founded Women of All Red Nations, and a long-time water rights activist on the Standing Rock Reservation in North Dakota, puts it:

*“Water is the life blood, the key to the whole thing. Without water, our land rights struggles – even if we were to win back every square inch of our unceded lands – would be meaningless. With the water which is ours by aboriginal right, by treaty right, and by simple moral right, we Indians can recover our self-sufficiency and our self-determination. Without that water, we are condemned to perpetual poverty, erosion of our land base, our culture, our population itself. If we do not recover our water rights, we are dooming ourselves to extinction. It’s that simple. And so I say that the very front line of the Indian liberation struggle, at least in the plains and desert regions, is the battle for control over our water.”*²⁶²

3.2 Lessons learned:

This review suggests that among the key actions for Indigenous Peoples and Ethnic Minorities in dealing with dam-building schemes are the following elements:

- Early involvement in project planning and evaluation of options. Experience suggests that the earlier in the project cycle people engage with developers, the better chances they have of securing a favourable outcome, be it stopping the dam, relocating or redesigning it or ensuring acceptable compensation.
- Get informed. Early and then sustained access to all official or company documents relating to planned projects is essential for well-judged interventions. Some countries and many international development agencies have freedom of information acts or policies, which can be appealed to if documents are not forthcoming.

- Establish strong autonomous institutions. Organised and mobilised communities with widely accepted and open decision-making processes have proven far better able to deal with dam-building projects than divided ones.
- Secure legal standing for representative institutions. In many countries, customary institutions are not legally recognised. Organisation and registration using existing laws may be crucial before the people concerned is accepted in negotiations.
- Register land ownership and customary use. Even in countries which recognise indigenous rights to lands, processes of land registration often lag far behind. Securing documentation of rights can be crucial to strengthening community rights in negotiations.
- Document customary usage, historical occupation and current land use. Establishing independent sources of information can be crucial in court cases and negotiations. Increasingly Indigenous Peoples are making maps of their land use and historical occupation, using easy-to-use GPS and GIS technologies to demonstrate their customary ties to their territories
- Use the law. Because so many dams and resettlement schemes are imposed without due regard to legal process, recourse to the courts has proved a powerful tool for many affected peoples. Of course, where national laws are weak and the judiciary not independent, this avenue may be closed.
- Use international standards and procedures. International law and multilateral development agencies not only have standards regarding human rights and resettlement but also have procedures to respond to violations and grievances. Filing complaints with the ILO and the World Bank's Inspection Panel, for example, while frustratingly slow and cumbersome, has resulted in improvements in some cases.
- Insist on legally enforceable contracts with implementing agencies. Indigenous Peoples have long demanded that developers (governmental and private) enter into binding agreements with them, enforceable through the courts, prior to commencing projects. Marked improvement in the way dam-builders now deal with Indigenous Peoples in Canada has resulted from this practice.
- Involvement in preparation, environmental and social impact assessments, appraisal, monitoring & evaluation. Integral involvement of representatives of the affected communities in the full project cycle improves communications, allows the earlier identification of potential problems and implementation errors, and facilitates the identification of mutually acceptable solutions.
- Share experiences. Sharing experiences between Indigenous Peoples in different areas, countries or even continents through meetings, workshops, community exchanges has proved a valuable way for Indigenous Peoples to learn from each other and strengthen their resolve to confront their problems.

3.3 Non-Governmental Organisations: the value of long-term support work

The risks that NGOs substitute their agenda and voice for that of affected communities have been highlighted above. Despite these negative cases, many Indigenous Peoples and Ethnic Minorities have found NGOs to be important allies in helping them find solutions to the problems they face from large dams. Especially in developing countries, NGOs are also often able to help affected communities access funds to build up their capacity to deal with proposed projects.

The main tasks that NGOs need to assist affected communities with are those highlighted above. Experience has taught NGOs a number of other key lessons in their support work with Indigenous Peoples. These include:

- Ensure the affected people maintain the initiative. Although cultural traditions of advocacy and support work vary widely around the globe, ensuring a democratic and mutually accountable relationship between NGOs and affected groups is vital to maintaining trust and good communications.
- Maintain a long-term engagement. Staff turnover in NGOs is high and the focus of their work is often driven by donor fashions. Dealing with large dams, however, has proved a very long-term exercise. NGOs are most effective where they are able to maintain their commitment to support communities over decades. If they do so they become important reservoirs of experience and often evolve longer institutional memories than official development agencies making them potentially valuable partners in development planning.
- Build up detailed documentation and information. NGOs have proven especially valuable allies to Indigenous Peoples where their wider networks and greater access to modern communications give them access to information about laws, likely impacts, comparable experiences and effective negotiating tactics.
- Open sustained, high-level media campaigns have also proved important for ensuring transparency and accountability where government officials and project staff have proved reluctant to deal fairly with the affected peoples.

3.4 Private Sector: sharing power

The move to private sector development of dams is relatively new and only a few of the longer established companies have taken any initiative to address the issues raised in this paper. Indeed, many of the new companies developing dam projects have no previous experience in building or operating dams. For example, S. Kumars Power Corporation Limited, the company developing the Maheshwar Dam in India, is a textile company with no previous experience of dam building.²⁶³ Similarly the huge consortium, Bakun Hydroelectric Corporation, formed to build the Bakun dam in the Malaysian State of Sarawak and which was prepared for flotation on the Kuala Lumpur Stock Exchange in 1996, had no prior dam building experience.²⁶⁴ Both projects have been highly controversial and have had a very low level of participation of the affected peoples. Despite community objections and resistance, construction and involuntary resettlement schemes have been pushed through.

Companies and professional bodies with a greater experience of building dams have, however, begun to evolve clear standards and policies, which suggest greater sensitivity to the needs and views of indigenous peoples and ethnic minorities.²⁶⁵ The International Finance Corporation, the private sector financing arm of the World Bank notes that:

*'Public consultation plays a critical role in raising awareness of a project's impacts and **gaining agreement** on management and technical approaches in order to maximise benefits and reduce negative consequences. Furthermore, consulting and collaborating with the public makes good business sense. Public consultation can lead to reduced financial risk (from delays, legal disputes, and negative publicity), direct cost savings, increased market share (though good public image), and enhanced social benefits to local communities.'*²⁶⁶

Leading dam builders go further. For example, in its 1997 Position Paper on Dams and the Environment, ICOLD - the International Commission on Large Dams, a professional body bringing together many major dam- building interests - states:

"f) Involuntary resettlement must be handled with special care, managerial skill and political concern based on comprehensive social research, and sound planning for implementation. The associated costs must be included in the comparative economic analyses of alternative projects, but should be managed independently to make sure that the affected population will be properly compensated. For the population involved, resettlement must result in a clear improvement of their living standard, because the people directly affected by a project should

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*always be the first to benefit instead of suffering for the benefit of others [For that reason, under a law dating back to 1916, communities in Switzerland are entitled to considerable annual payments and quotas of free energy for granting the rights to hydropower development on their territory]. **Special care must be given to vulnerable ethnic groups.***

*g) Even if there is no resettlement problem, the impact of water resources development projects on local people can be considerable during both construction and operation. **All such projects have to be planned, implemented and operated with the clear consent of the public concerned.** Hence, the organisation of the overall decision-making process, incorporating the technical design as a sub-process, should involve all relevant interest groups from the initial stages of project conceptualisation, even if existing legislation does not (yet) demand it.*

Such concerted action requires continuous, comprehensive and objective information on the project to be given to governmental authorities, the media, local action committees or other non-governmental organisations, and above all to the directly or indirectly affected people and their representatives. In this information transfer from planners to the public, dam engineers must contribute, through their professional expertise, to a clear understanding and dispassionate discussion based on facts and not on irrational ideas of the positive and negative aspects of a project and its possible alternatives. Dam promoters must act as mediators and educators with the aim of becoming good neighbours and not intruders.”²⁶⁷

Likewise, as noted above, the International Hydropower Association has also endorsed the principle of prior and informed consent for future dam-building. Hydro-Quebec, strictly speaking a state-owned for-profit utility, has perhaps gone furthest in elaborating these principles in detail and seeking to put them into practice. As the company notes in its submission to this review, the way it deals with Indigenous Peoples has transformed in the past forty years, “from ignoring such issues in the 1950s and 1960s to proposals today of full partnership with local communities...”. Its first major project affecting Indigenous Peoples, the James Bay project, had ignored Indigenous land claims and led to lengthy litigation, eventually resulting in the James Bay and Northern Quebec Agreement between seven signatories including the Federal and Quebec Governments and the Cree and Inuit nations. The settlement secured financial benefits for the Cree and Inuit, ownership title to defined areas of land, and future hunting, trapping and fishing rights to a much wider area, in exchange for extinguishing their ancestral land rights. The company believes that the Quebec Cree have benefited overall from the project and points to a report of the Royal Commission on Aboriginal People which compares their current situation [very] favourably with the Ontario Cree to the west.²⁶⁸ Yet, as noted above, the James Bay Cree themselves still have major concerns about the impact of the James Bay complex and the way proposed projects are being negotiated.

Current Hydro-Quebec policy stresses that, for projects to go ahead, they should be environmentally acceptable, **socially accepted** and profitable. As the company points out. “This is a major shift inasmuch as it clearly puts environmental and social considerations on an equal footing with economic ones”.²⁶⁹

The acceptance of the principle of prior and informed consent marks a turning point in discussions between Indigenous Peoples and Ethnic Minorities and the developers of large dams. A crucial issue for affected communities that then needs clarification and acceptance is the means by which consent is expressed. In the case of Hydro-Quebec, the company notes that agreements are negotiated between the company and Band Councils which are then subject to rejection or acceptance, sometimes by referendum, of the entire community. The exact modalities for negotiation and reaching agreement vary from case to case and depend on various factors, including the political organisation of the peoples concerned. The company emphasises the importance of capacity-building of indigenous institutions for there to be a sense of partnership and trust in negotiations. These negotiations between the communities and the company include seeking agreements on; mechanisms for the joint design

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and implementation of mitigation and compensation measures; compensation for negative impacts such as loss of hunting and fishing opportunities; economic development programmes and monitoring arrangements. In addition the company allocates a fund of 1-2% of capital investment in the project towards community development funds. In future, Hydro-Quebec hopes to go further and develop options that will allow direct community participation in social and environmental assessments – with joint EIAs being aspired to – and that will result in the company sharing ownership and revenues with affected communities where feasible.²⁷⁰ However, as noted above, the Grand Council of the Crees of Quebec argues that the company should have been negotiating directly with them as the political body elected by the Cree people rather than piecemeal with the Band Councils.²⁷¹

Another project that Hydro-Quebec has negotiated with Indigenous Peoples is the Sainte Marguerite 3 Hydroelectric Development, which gained approval from the Quebec Government in 1994 subject to the company reaching a negotiated agreement with the Montagnais (Innu). The project has divided the affected Innu people, with the Band Council only securing approval, through a referendum of the two communities, by a very narrow majority of 52%/48%.²⁷² As Hydro-Quebec itself admits “the referendum temporarily amplified divisions in the community: between Uashat and Maliotenam [the two villages], and between the Traditionalists and Others”.²⁷³ These divisions were mostly due to a proposed river diversions which are considered essential for the profitability of the project but which will affect one community in particular, Maliotenam. The river diversions were not authorised by the government. Hydro-Quebec has decided it will only go ahead with the diversions if and when local consent and government approval are secured.²⁷⁴ Meanwhile the rest of the project is under construction and due for completion in 2001. The project can be modified to incorporate the river diversions once and if they get the go-ahead.²⁷⁵

Hydro-Quebec notes that three conditions make it possible for the principle of prior and informed consent to be adopted in Canada – the existence of choices between dams sites, the existence of alternative energy generation technologies, such as natural gas turbines, and the relative affluence of Canadian citizens which removes the urgency from development decisions aimed at poverty alleviation. Hydro-Quebec makes the observation:

*“In countries where only one or limited sites are available for hydropower development and water supply, where needs are pressing, where electricity production alternatives are few, the approach of local consent to new projects takes another dimension. In some cases, giving “veto” power to local communities on projects that may provide essential public services to millions raises a fundamental ethical dilemma: the balance between minority and majority rights. Such “veto” power may even backfire against local communities raising resentment and social tensions as the majority may feel hostage to the decisions of a few. This is not to say that projects of national importance should be rammed through at the expense of local communities – we have seen enough of such justifications around the world over the last generations, with disastrous consequences on local communities and the environment alike. We simply are pointing out a difficult ethical issue which projects might raise in less developed economies.”*²⁷⁶

Reflecting on such arguments Peter Bosshard of the Berne Declaration, a Swiss NGO, made these remarks to the recent WCD hearing in London:

- Should Southern governments care less about the economics of their power projects because they are poor? Can they better afford to waste resources on a dam which is more expensive than, say, increasing the efficiency of the transmission system? Certainly not.
- Should Southern governments care less about the social impacts of their projects? Are their industrial and urban consumers so poor that they need to be subsidised by the even poorer dam-affected people? Again – certainly not. After all, it is the affected people who pay for the so-called external costs, and not the North, or outer space.

- Finally, should Southern governments care less about environmental costs? Here even more than in the North, natural resources are not a luxury concern, but support the economic livelihood of millions of people.

*So our Southern partners argue that dam projects in the South should fulfil the same basic conditions as dams in the North, and I agree with them.*²⁷⁷

3.5 International development agencies: the need for accountability

Resettlement policies related to large dams were first adopted by the United Nations Food and Agriculture Organisation in 1971.²⁷⁸ As mentioned above, a more detailed policy on Involuntary Resettlement was adopted by the World Bank in 1980 and revised in 1990. The 1990 policy was endorsed by the Development Assistance Committee of the Organisation for Economic Co-operation and Development in 1993, implying acceptance of these same standards by the other main multilateral and bilateral development agencies.

The World Bank's current resettlement policy is at odds with Indigenous Peoples' demands in a number of respects. The first and most obvious is that it unquestioningly accepts the doctrine of eminent domain and thus accepts the principle that international development assistance can legitimately be given to projects that entail obligatory expropriation and forced relocation. Since the acceptance of resettlement by local communities is not required, such a policy provides little incentive to either borrower government or Bank project officers to enter into meaningful negotiations with local communities or seek alternative, more acceptable development options. Casting the local communities into the role of victims and passive beneficiaries contributes substantially to project failure.

Although the multilateral development banks have developed a number of other policies designed to improve civil society participation in projects, the overall top-down and imposed character of internationally financed dam projects remains a major problem for Indigenous Peoples and Ethnic Minorities. This tendency, coupled with the procedural weaknesses and deficient incentive structures summarised above, means that policies are applied to the minimum extent that staff can get away with. If new mechanisms were in place to increase the accountability of project staff to those affected the performance of multilaterally funded projects could increase markedly.

3.6 MDB examples of 'Best Practice':

Also worrying for Indigenous Peoples and Ethnic Minorities are the apparently low standards of 'Best Practice' that the multilateral agencies seem to have accepted. The problems with the World Bank's positive assessment of the Khao Laem project have been noted above. For its part the Asian Development Bank has stated that the resettlement of Iban Dayaks to make way for the Batang Ai dam in Sarawak was an example of a 'culturally sensitive and economically sound programme'; because 'the policies and plans to resettle the indigenous peoples affected by the Batang Ai Hydropower Project in Malaysia were carefully investigated and prepared.'²⁷⁹ Other assessments are more sanguine.

The project caused the displacement of some 2,800 Iban from 26 longhouses. A study carried out by the Sarawak Museum before the project began showed that 98% of the Iban still practised their traditional religion and maintained a strong attachment to their traditional customs, beliefs and traditional aspects of longhouse living. Most of the people felt their standard of living had improved in recent years and that they already had sufficient income from rubber and pepper that they cultivated in the old swiddens. Many feared that the gods would punish them with natural disasters if they

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allowed the flooding of their sacred land. Many gave as a condition for accepting their removal that they not be resettled on a land scheme, that they be assured the possibility of growing rice and of maintaining their mixed economy of hunting and farming.²⁸⁰ Eventually the Iban were persuaded to move in exchange for promises of free housing, free water, free electricity and 11 acres of land per family.

The reality has proved a bitter experience. Not only were they resettled on a Government land scheme, but they were forced to change their way of life radically. Rice cultivation proved impossible on the terraces prepared for them and they were obliged to set up as small-holders on a plantation scheme. Incomes fell to the point that according to one study 60% of households were below the State poverty line, with the majority of respondents reporting that lack of land was their main problem.²⁸¹

Clearly Multilateral Development Banks (MDBs) are awkwardly placed to deal with the sensitive social issues related to large dams affecting Indigenous Peoples and Ethnic Minorities. Since the Banks' contractual counterparts are borrower governments, their interactions with affected communities tend to be mediated through Government agencies. MDB policies thus tend to get weakened and attenuated by lack of commitment or capacity on the part of borrower government institutions to adhere to MDB standards and policies.

To get around this problem, the solution that Indigenous Peoples have long advocated is for there to be tripartite agreements between the MDBs, Governments and Indigenous Peoples, thus ensuring that the affected peoples are directly involved in project planning, implementation and monitoring. Indigenous Peoples likewise have insisted that they should have the right to accept or reject proposed developments in their territories.²⁸²

3.7 Inter-American Development Bank: informed consent

In 1998, the Inter-American Development Bank (IDB) adopted a policy on Involuntary Resettlement which comes close to accepting these demands. The policy institutes gradually improving practices that the IDB began to adopt since the mid-1980s, after reviews had shown that several IDB-funded projects were failing to address the needs of those being forcibly resettled. Effective resettlement, the reviews found, could be achieved when:

- there was broad participation of those affected mediated through their local representative institutions
- compensation of land for land was offered
- resettlement plans and schedules were well linked to the construction programme
- resettlement was followed up with broader economic and social development initiatives.²⁸³

Accordingly, in 1984, the IDB adopted 'socio-cultural check-lists' meant to be used by IDB operational staff to ensure these kinds of issues were addressed in future projects. Systematic screening of projects for environmental and social impacts was instituted in 1990 and 'operational guidelines on involuntary resettlement' were adopted in 1991 and have been updated several times since. Finally, and building on the lessons learned in the intervening time,²⁸⁴ the IDB adopted a public policy on involuntary resettlement in 1998.²⁸⁵

The IDB policy requires borrower governments and staff to make every effort to avoid or minimise the need for involuntary resettlement through a search for alternatives and through adequate assessment of the numbers of people likely to be impacted and the full costs of resettlement. The policy also insists that any resettlement plan should secure at least equal living standards for those relocated. Specifically with respect to Indigenous Peoples, the policy stipulates the need for:

- informed consent by the affected people
- their extensive participation in the design of the compensation and resettlement plan
- full recognition of customary rights
- fair compensation including special measures to compensate for loss of cultural property (such as burial or sacred sites) and to minimise disruptions to existing patterns of socio-cultural organisation
- compensation with land for land lost where required
- indigenous communities be better off after removal.²⁸⁶

IDB staff interviewed in this review believe that the adoption of the operational guidelines and the policy have already led to significant improvements. Resettlement has become less frequent and, where unavoidable, planning has improved. Resettlement is now seen as an integral part of projects on a par with the engineering or construction components, and accounts for approximately 30% of the overall costs of rural projects involving relocation and 50% of urban projects. Notwithstanding these improvements, the IDB staff note that the main obstacle to further advance is weak borrower government capacity. Even where dam-building or other development activities are carried out by the private sector on Indigenous Peoples' lands, there is a pressing need for strengthened government capacity to ensure indigenous participation and to regularise tenure. The IDB is currently proposing programmes of institutional strengthening with governments to help secure indigenous rights.

Although the African Development Bank has yet to accept the principle of prior and informed consent, its review of its financing of dam-building projects in Africa reveal that project performance improves if resettlement programmes are first discussed and negotiated with the local communities. Where, as in the case of the Lupoholo-Ezulwini project, the resettlement 'plan has taken into account all the social and cultural specifications of the populations, for example by transferring the graves, and meeting beforehand, all the costs relating thereto, **to the satisfaction of the traditional chiefs**', the AfDB considers that a successful resettlement has resulted.²⁸⁷ In general, however, resettlement performance of AfDB-funded projects appears to have been inadequate, one cause being that 'the frequency and quality of the Bank's supervision missions have proved to be largely insufficient' and as a result the AfDB's project preparation and appraisal guidelines have not been adhered to.²⁸⁸

3.8 Uncertain progress at the World Bank:

Surprisingly, the World Bank, which until the 1990s had shown a leadership role in its adoption of new standards on both Indigenous Peoples and Involuntary Resettlement, may now be falling behind the Inter-American Development Bank. Indeed, many NGOs and even some World Bank staff interviewed in the course of this review consider that the World Bank is presently moving in the opposite direction through a process of revising and simplifying its Operational Directives. Among those policies being revised by the World Bank are both the policy on Indigenous Peoples and that on Involuntary Resettlement.

As this article goes to press, the World Bank is currently reviewing comments made by NGOs and resettlement experts on its new draft Operational Policy on Involuntary Resettlement, which it plans to submit to its board of executive directors for approval and adoption in early 2000. The principle advance in the new policy is that it will consider projects to be 'active' so long as the social mitigation plans have not been fully implemented, whereas previously the Bank considered a project closed once the infrastructure component was completed, regardless of whether or not the resettlement had been duly carried out.

Notwithstanding this advance, a number of serious concerns have been raised about the current draft, including the following:

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- it does not accept the principle of prior and informed consent, either for those relocated in general or for Indigenous Peoples in particular
- a land for land provision is not mandatory
- there is no assurance that those resettled are made better off than before.

In addition to correcting these deficiencies, those reviewing the draft policy have recommended the following additional changes to the draft:

- Clearer stipulations are needed to ensure the involvement of local communities in baseline surveys
- Clearer provisions are needed to secure the interests of customary rights holders
- Explicit provisions are required on the need for compensation for non-monetised economic activities, unquantifiable livelihood functions and cultural losses
- Stronger measures are required to ensure the involvement of project affected people in Monitoring and Evaluation
- Enforceable mechanisms are required for the redress of grievances
- A proposed advisory panel should include independent members.

It remains to be seen how far the World Bank will go in responding to these suggestions. However, the indications are that although the World Bank strongly favours processes that involve disclosure of information about proposed projects and effective public consultations, including special measures to address the concerns of Indigenous Peoples and other vulnerable groups, it feels unable to accept the principle of prior and informed consent.²⁸⁹

If MDBs are to restore confidence that their dam building projects will really benefit affected communities, much bolder reforms are required. Land for land provisions should be restored. The principle of prior and informed consent of affected peoples should be insisted on. Tri-partite agreements between MDBs, Governments and Indigenous Peoples or Ethnic Minorities should be mandatory. In addition, new internal procedures should be instituted making MDB project staff personally accountable for the faulty application of policies and providing the right incentives for them to invest the time and resources in adhering to them. Moreover, MDBs need to recognise that the norms that they establish have wider implications beyond their own performance and the quality of the projects they fund. They influence national laws in borrower countries, shape the policies of other aid agencies and international bodies and may even contribute to emerging principles of international law. As international indigenous rights lawyer Benedict Kingsbury notes:

*It is incumbent on international institutions to recognise that in adopting, applying and supervising their policies they are doing more than making rules for themselves: they are participating in an international normative process.*²⁹⁰

3.9 Governments

Although the private sector and international funding agencies play an increasingly important role in the building of large dams, it still remains the responsibility of governments to legislate standards for dam construction. Application of these standards in turn implies a coherent and positive policy framework regarding both dams and indigenous peoples, adequate institutional capacity, the rule of law and the maintenance of an independent judiciary. Governments, in short, remain key players.

In section 1, this study has already examined some of the ‘best practice’ examples set by governments towards indigenous peoples and ethnic minorities. Pluralist policies, which devolve power to local communities and grant autonomy to Indigenous Peoples are increasingly finding favour in Latin America and in some Asian countries. Legislation recognising indigenous peoples’ rights to their lands and territories has begun to be adopted and applied in South America and the Philippines. An

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important step forward is being made by those countries which have ratified ILO Convention # 169. In addition some countries have begun to modify the principle of eminent domain, by requiring the consent of local communities or indigenous peoples before development plans get government approval (see p. xx above).

A comprehensive review of these national developments is beyond the scope of this paper. What is clear, however, is that, if the principle of free, prior and informed consent is to be legally accepted and practically applied, many countries will need to carry out far-reaching legal and institutional reforms. These reforms are likely to gain ground if clear policies on free, prior and informed consent are adopted by multilateral development banks, bilateral aid programmes, export credit agencies and by the private sector.

4. Conclusions and Recommendations

4.1 Conclusions

Taken together, the literature review, email consultation, interviews, seminars in Washington and the public meeting in Geneva, all undertaken as part of this study, provide a fairly sound basis for the following general conclusions about '*Dams, Indigenous Peoples and Ethnic Minorities*'.

Distinctive status and rights

- Indigenous Peoples and Ethnic Minorities constitute distinctive social categories in international law and development practice and, on these grounds alone, merit special attention from the dam-building industry.
- International law and standard-setting accepts these peoples' rights to: self-definition; to practice and maintain their own religions, languages and cultures; to exercise their customary law; to represent themselves through their own institutions; to the ownership, management and control of their lands, territories and resources; to compensation with land for land in the case of relocation; and to participate in decisions regarding their future.

Serious Impacts

- Large dams have disproportionately impacted Indigenous Peoples and Ethnic Minorities. Future dam building also targets their lands disproportionately.
- Major impacts include: loss of land and livelihood; the undermining of the fabric of their societies; cultural loss; fragmentation of political institutions; breakdown of identity; human rights abuse.
- Women have been especially badly affected.
- The majority of those affected have been made worse off than before.

Procedural failures

A number of procedural failures have contributed to these problems:

- Failure to identify the distinctive characteristics of affected peoples in project planning
- Failure to recognise customary rights
- Denial of the land for land provision
- Inadequate compensation and ill-planned resettlement
- No prior and informed consent
- No negotiation
- Failure to appreciate the wider impacts of projects or carry out watershed-wide planning
- Inadequate or absent environmental and social impact assessments
- Tardy and inadequate reparations

Underlying problems

Underlying these problems and procedural failures lie a number of institutional, structural and political factors. The study has highlighted the following:

- Denial of the right to self-determination.
- Social exclusion including through official policies and institutions and prevalent discrimination in national societies.
- Lack of consideration of Indigenous Peoples and Ethnic Minorities in regional and national energy and water policies and plans.

- The inability of Cost-Benefit Analyses to capture Indigenous Peoples' and Ethnic Minorities' priorities and values.
- The focus of private companies, funders and government agencies on large-scale projects to the exclusion of alternatives.
- The engineering of consent and the denial of voices of opposition
- The pressure to lend in international financial institutions which results in over-rapid decision-making, lack of consideration of alternatives, abbreviated participation and failures to apply agreed procedures.
- The lack of accountability of dam builders, operators, contractors, consultants and funders to the affected peoples. This tendency is likely to be exacerbated by moves to increasingly privatise the dam building industry.
- The acceptance among macro-economic planners of the need for social engineering to promote modern development processes.

Emerging 'Best Practice'

Encouragingly, substantial movement has already been achieved towards a consensus on 'best practice' by some multilateral development banks, some governments, elements in the private sector, Indigenous Peoples and Ethnic Minorities and among NGOs. Among those 'best practices' on which there is emerging consensus, if not full agreement, are the following:

- The need for Government policies and laws which recognise Indigenous Peoples' and Ethnic Minorities' rights and promote cultural diversity, territorial management and self-governance.
- Acceptance of the principle of free, prior and informed consent (including implicitly the right of veto).
- Early negotiations between dam-builders and affected peoples.
- Agreements which provide enforceable contracts, mechanisms for the arbitration of disputes, and joint implementation and remedial measures, without demanding the surrender of rights.
- The establishment of independent regulatory oversight mechanisms to ensure compliance.
- Compensation with land for land.
- Joint social and environmental impact assessments and joint monitoring and evaluation.
- Resettlement and impact mitigation plans which ensure that those relocated end up better off than before removal.
- Benefit sharing options including revenue sharing or joint ownership schemes.
- Capacity building of Indigenous Peoples and Ethnic Minorities institutions.

Although, Multilateral Development Banks (MDBs) led the way in the 1980s in establishing standards for resettlement and rehabilitation, their subsequent failure to adhere to these standards has been all too well documented. A worrying finding of this review is that some MDBs seem to be weakening rather than strengthening their standards. They also seem reluctant to reform the incentive structures for staff so that they have the time, resources and inclination to apply these standards. In order to sustain the general movement towards consensus on 'best practice', it is urgent that MDBs embrace the principles of free, prior and informed consent, compensation with land for land and that relocatees be better off after removal.

5. Recommendations

The WCD consultation on the theme of ‘*Dams, Indigenous Peoples and Ethnic Minorities*’, held in the World Council of Churches in Geneva on 31 July and 1 August 1999, provided a great deal of additional material supporting these main conclusions.²⁹¹ Although time did not allow the elaboration of detailed recommendations the following key principles and recommended practices emerged from the discussions for consideration by the World Commission on Dams.

5.1 Recognition of the Distinct Nature and Rights of Indigenous Peoples and Ethnic Minorities

- Proponents of large dams need to understand the distinct nature of Indigenous Peoples and Ethnic Minorities. Their rights flow from this distinctiveness. The United Nations Draft Declaration on the Rights of Indigenous Peoples should guide the interactions of national governments, the private sector and other external agencies with such peoples. In particular the rights of Indigenous Peoples to self-definition, to the ownership and control of their territories, to exercise their customary law, to practise their traditional religions, to represent themselves through their own institutions and to self-determination need to be recognised.
- Many Indigenous Peoples and Ethnic Minorities continue to suffer racial and cultural discrimination and their rights to their customary lands and the resources they depend on are often not adequately recognised. Distinct and appropriate measures are therefore needed to ensure they are not further marginalised in dam building programmes.

5.2 The Fundamental Importance of Territories

- Many speakers stressed the fundamental significance to indigenous peoples and ethnic minorities of their territories. As a spokesperson for the Saami put it: ‘*Indigenous Peoples have a right to a past, a right to a presence and a right to a future*’. Their right to the past is bound up with their attachment to their territories. ‘*The land, the forests and the rivers are our mothers*’ as another speaker noted. Their right to a presence, implies a right to a voice in decision-making and to have a secure place on the earth. Moreover, in looking to the future, ‘*as members of indigenous peoples we don’t have the right to sell out our cultural existence because of the coming generations*’.
- What Indigenous Peoples and Ethnic Minorities seek is to become active protagonists of their own development and no longer to be cast into the roles of passive recipients of aid or victims of development.

5.3 Rethinking the doctrine of eminent domain

- Accommodating Indigenous Peoples’ and Ethnic Minorities rights’ implies rethinking the doctrine of eminent domain. Expropriation of their lands in the national interest against their will implies for them not just a loss of private property but a violation of their fundamental human rights and freedoms, including in particular their right to exercise their own religions which are bound up with their ancestral lands. The meaning of the ‘national interest’ in the context of multi-ethnic, pluri-cultural societies embracing a number of nations or nationalities in any case needs clarification.
- The doctrine of eminent domain also needs rethinking as dams are increasingly being built for private profit by corporations and are often designed to feed into regional electricity grids and promote exports. National needs and interests are not clearly or uniquely being served by dams built under such circumstances.

5.4 Free, Prior and Informed Consent

- The principle of free, prior and informed consent should guide the building of dams that may affect Indigenous Peoples and Ethnic Minorities. Such consent should be sought at the very beginning of the process of considering plans to build dams.
- As an industry spokesperson noted at the meeting, early negotiation of consent is not just ethically desirable but also saves time and money and helps ensure that social and environmental issues are adequately taken into account in planning and implementation.
- Ensuring that such consent is really free, prior and informed implies:
 - Recognising the peoples' own representative institutions as required by ILO Convention 169.
 - Information is made available in a timely manner and in a form and in languages intelligible to the local communities (and not just their leaders or lawyers).
- The right to free consent implies equally the right to dissent (right of veto). Where a people are clearly opposed to a particular project their decision should be respected and they should continue to benefit in the same way as other peoples from State benefits, development plans and services.

5.5 Respect for Human Rights

- Indigenous Peoples' and Ethnic Minorities' fundamental human rights and freedoms must be secured through the whole dam-building process.
- As the representative of the United Nations Office of the High Commissioner for Human Rights noted at the meeting, in addition to the other rights already highlighted by others, this includes – *inter alia* – the right to life, the right to livelihood, the right to participation, the right to exercise one's own religion and the right of opposition as set out in the Declaration on Human Rights Defenders.
- In countries or situations of pervasive repression or denial of rights and freedoms, international agencies and companies should be especially cautious about involving themselves in dam-building projects.

5.6 Early Involvement in the Planning Cycle

- Representatives of the peoples concerned should be involved in national and regional energy and water planning and not just at the project level:
- Full consideration of alternatives, including those suggested by the peoples concerned, should be carried out before focusing on any particular project.

5.7 Negotiated Settlements

- To ensure clear and binding agreements based on mutual understanding, learning from each other and sharing of knowledge, negotiations should result in mutually agreed, formal and legally enforceable settlements.
- Settlements should not require the surrender of rights.
- External funding and construction agencies should also be legally accountable for their involvement in, or support for, such projects.
- Mutually accepted arbitration processes for the resolution of ensuing disputes should be part of these settlements.

5.8 Joint Implementation and Monitoring

- The peoples concerned should be integrally involved in joint environmental and social impact assessments. Social impact assessments should be given the same status and importance as environmental impact assessments.
- A fundamental principle of mutually agreed resettlement and rehabilitation plans must be compensation with lands, territories and resources equal in quality, size and legal status to those lost.
- There should be full compensation for any loss or injury.
- Remedial measures should be incorporated to cushion social, cultural and institutional disruption.
- The peoples concerned should be jointly involved in project implementation and in Monitoring and Evaluation.
- Special provisions must be made to ensure that the interests of women are taken into account.
- Where requested settlements should include fair sharing of benefits or options for joint ownership and profit sharing.

5.9 Restitution for Past Loss

- The meeting noted the huge numbers of people affected by past dams who had been denied adequate compensation or rehabilitation. Many of their problems endure, or become apparent, after the dams have been constructed or made operational and may even carry on after they have been decommissioned.
- Mechanisms need to be established to allocate responsibility for these damages and to provide reparations and compensation for peoples displaced by these past projects. These mechanisms should include measures to compensate for all losses and for the suffering endured since the dams were built.

5.10 Enforcement of Standards

- The need for enforceable standards was emphasised. The suggestion was made that the World Commission on Dams should recommend the establishment of some kind of international ‘Ombudsman’ or ‘Tribunal’ to oversee the future implementation of such standards.
- One participant suggested that, in the absence of clear standards and processes of enforcement, there should be a moratorium on the building of large dams.
- The WCD should refer to the ‘Guidelines relating to transitional corporations and indigenous peoples submitted by the Indigenous Preparatory Meeting’ to the Working Group on Indigenous Population in 1997.²⁹²

The meeting recognised that further discussions were needed if adequate and more detailed recommendations were to be developed. Separate lists of recommendations should be developed for all the actors involved in dam building including: Governments, International Financial Institutions, including Export Credit Agencies, the Private Sector, Consultancies, the United Nations, NGOs and for affected peoples.

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Endnotes

¹ The findings and conclusions of this paper derive from an extensive but not exhaustive review of the available literature, the results of an email questionnaire sent out to several hundred individuals known to be involved in the issues of Indigenous Peoples, Ethnic Minorities and/or Dams, and telephone interviews with a number of legal experts, indigenous spokespersons and NGOs. The consultation embraced a wide range of actors, including industry, international development agencies, environment and development NGOs and representatives of Indigenous Peoples and Ethnic Minorities. The paper also draws on the findings of the WCD's joint consultation on '*Dams, Indigenous Peoples and Ethnic Minorities*', held in Geneva on 31 July – 1 August 1999. In addition, the draft paper was presented and discussed at two seminars held in Washington DC in early November at the World Bank and the Inter-American Development Bank to ensure that account was taken of their perspectives.

² Colchester 1993, 1995; Tenant 1994; Gray 1995; Kingsbury 1995; Fisher 1993; Maybury-Lewis 1996; Daes 1996a:72; Pritchard 1998a:44; Pritchard 1998b:61. Some Asian and African countries already accept that the term 'indigenous peoples' applies to the 'tribal peoples' and 'cultural minorities' within their borders, including Nepal, Philippines, Cambodia and Botswana. In a landmark case for the Ainu of Japan, on 28 March 1997 a local court in Sapporo, Hokkaido, recognised the Ainu as an indigenous and minority people. The Asian Development Bank has also adopted a policy on 'indigenous peoples' to guide its operations. For a more nuanced discussion of the applicability of the concept of indigenous peoples to Asia see Kingsbury 1998.

³ Daes 1996b.

⁴ The Working Group on Indigenous Populations has accepted the following working definition from the 'Cobo Report' of 1986 as the basis for its work: '*Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity; as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.*'

⁵ Thornberry 1987.

⁶ Gray 1995; Thornberry 1996; Kingsbury 1995; 1998.

⁷ World Bank 1991.

⁸ Daes 1996b.

⁹ The following countries have ratified ILO Convention 169: Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay and Peru. The following countries have ratified ILO Convention 107: Angola, Argentina, Bangladesh, Belgium, Bolivia, Brazil, Cuba, Dominican Republic, Egypt, El Salvador, Ghana, Guinea-Bissau, Haiti, India, Iraq, Malawi, Pakistan, Panama, Portugal, Syrian Arab Republic and Tunisia. Venezuela has incorporated ILO Convention 107 into national law but has not registered its adherence to the Convention with the International Labour Office.

¹⁰ Bennett 1978.

¹¹ *General Recommendations of the Committee on the Elimination of Racial Discrimination XXIII(51) concerning Indigenous Peoples*. Adopted at the Committee's 1235th meeting, on 18 August 1997, CERD/C/51/Misc.13/Rev.4 cited in Kambel and MacKay 1999.

¹² *Concluding observations of the Human Rights Committee: Canada 07/04/99*, at para. 8 UN Doc CCPR/C/79/Add. 105 (Concluding Observations/Comments 1999) cited in Kambel and MacKay 1999.

¹³ Jennings 1984.

¹⁴ Orange 1987; Prucha 1994; Alfonso Martinez 1998.

¹⁵ Until recently, the Human Rights Committee had avoided making a judgment on whether indigenous peoples have the right to self-determination. In the 1990 case of *Chief Omanayak v Canada*, the Committee upheld the complaint on the grounds of violations of other rights, thus leaving the Lubicon Cree's right to self-determination unaddressed. The Committee similarly declined to consider whether the ethnic Germans of Italian Tyrol constitute a 'people' in the case of *AB v Italy* the same year (Pritchard 1998:189).

¹⁶ Thornberry 1987.

¹⁷ Thornberry 1987:7.

¹⁸ Simpson 1997.

¹⁹ World Bank 1991.

²⁰ EU 1998.

²¹ ITTO 1989; WWF 1996; IUCN 1996; WCPA 1999; International Alliance 1997.

²² Morris 1985; Orange 1987; Treaty 7 elders et al. 1996; Alfonso Martinez 1998.

²³ Short and McDermott 1977.

- ²⁴ Thornberry 1987; Asmal et al. 1996.
- ²⁵ Bodley 1982; Colchester 1986; 1992; 1993.
- ²⁶ Bello 1999; Sanchez 1996.
- ²⁷ Sharma 1997.
- ²⁸ Somby 1999; Hertlein 1999; Hydro-Quebec 1999; Colajacomo 1999; Corbett 1999; Carino 1999; Anguita 1999; Gabungan 1999.
- ²⁹ UNRISD/79/C.14, Geneva, May 1979 cited in Turton 1987:3.
- ³⁰ Fisher 1993: 27.
- ³¹ Arnstein 1969:216-224; Borrini-Feyerabend 1996.
- ³² Srikandarajah et al. 1996; Hildyard et al. 1998.
- ³³ Cernea and Guggenheim 1997; Peters 1997.
- ³⁴ BIC handbooks; Pua-Villamor and Ocampo 1996; Colchester 1999.
- ³⁵ Letter to Baba Amte cited in Colchester 1984.
- ³⁶ As Cernea and Guggenheim point out, however, national laws generally frame “due compensation” in terms of monetary compensation and do not provide for wider forms of rehabilitation where the State’s powers of eminent domain are exercised. “Resettlement policies concerned with providing more than remuneration for lost assets, however, are relatively recent arrivals in national and international law . . . [However] resettlement policies are part and parcel of much broader, evolving concepts about human rights in development . . . Improved international policies must be complemented by better national policies and stronger institutions to translate policies into planning principles for actual projects” (Cernea and Guggenheim 1997: 7). For example, using public funds to purchase replacement land that will be given to private individuals “is often not covered by existing legislation or may even be expressly prohibited”. Similarly, “very few legal systems provide compensation for the taking of common property, even where the displaced population depends on it for the bulk of its needs”. Partly on the recommendation of the World Bank, the doctrine of “eminent domain” is now “being expanded in certain legal systems to provide for measures in addition to monetary compensation” (Shihata 1993:45).
- ³⁷ Fernandes and Thukral 1989:111.
- ³⁸ Statement by the US Government to the UN Working Group on Indigenous Populations, July 1999.
- ³⁹ *Federal Power Company v. Tuscarora Indian Nation*, 362 U.S. 99 (1960).
- ⁴⁰ *Winters v. United States*, 207 US 564 (1908).
- ⁴¹ Guerrero 1992:192-193.
- ⁴² Khera and Mariella 1982.
- ⁴³ Although exercise of this power, and power to abrogate treaties, is bitterly contested by native Americans, the US Congress has exercised it on a number of occasions including its decision in 1993 to abrogate the Cheyenne River Sioux Tribe’s rights to control non-Indian hunting and trapping under the Fort Laramie Treaty regarding lands taken by the United States for construction of the Oahe Dam and Reservoir. *South Dakota v. Bourland*, 113 S. Ct. 2309, 124 L. Ed. 2d 606 (1993).
- ⁴⁴ Fergus MacKay pers. comm. 25 June, 27 and 31 July 1999.
- ⁴⁵ Hydro-Quebec 1999.
- ⁴⁶ *Calder vs. The Attorney General of British Columbia* [1973] S.C.R. 313. Ironically, the Nishga people who fought this case, which established the principle of Aboriginal title, lost their own case (Treseder et al. 1999:10).
- ⁴⁷ Submissions by Dr. Ted Moses, Grand Chief of the Grand Council of the Crees to the WCD 30 November, 1 and 2 December 1999. For further discussion of this case see ‘engineering consent’ below.
- ⁴⁸ Treseder et al. 1999:11-12.
- ⁴⁹ *Delgamuukw vs. British Columbia* [1997] 3 S.C.R. 1010.
- ⁵⁰ Survival International 1999; *Canadian Natives Win Churchill Power Project EIS*, Environmental News Service 16 August 1999.
- ⁵¹ James Wilson, and Colin Sanson, pers. comm. 11 November 1999.
- ⁵² Garth Nettheim, pers. comm. 20 and 26 July 1999.
- ⁵³ James 1985:146-147.
- ⁵⁴ Tony Simpson pers. comm. 14 July 1999.
- ⁵⁵ Upadhyay and Raman 1998; Marwaha 1999; MRG 1999:19.
- ⁵⁶ IRN bulletins 9/9/1999, 13/9/1999, 4/10/99.
- ⁵⁷ Hydro-Quebec 1999.
- ⁵⁸ Statement by Alison Bartle of the International Hydropower Association to the WCD-Reuters Seminar 13 July 1999, Statement by Richard Taylor on BBC Radio 4 ‘One Planet’, 4 August 1999.
- ⁵⁹ World Bank 1994: iii-iv.

⁶⁰ McCully 1996:70.

⁶¹ The Nubian people of Northern Sudan were moved four times to make way for dams between 1902 and 1963, the majority being relocated to eastern Sudan, on the border with Eritrea and Ethiopia, in 1963 after their lands were flooded by the Aswan Dam. Those left – some 64,300 – are mainly living in Wadi Halfa province. Their three remaining centres of population – Wadi Halfa, Dongola and Marowe – are now threatened by a new dam, the Kajbar Hydroelectric Project at the Nile's third cataract. The three communities have vowed to commit mass suicide rather than be moved again: "Allowing our land to be taken means the extinction of our distinct language and culture forever. Our contention is that we must die before our culture and our language [die]. Where can we go if our area is taken." Bol 1999; see also Nubian Alliance Website < <http://I-cias.com/abubakr.htm>>.

⁶² The Volta project is often portrayed as affecting just one ethnic group. In fact, as Graham observes, the area directly affected by the dam's reservoir was characterised by "unusual ethnic and linguistic diversity. Krobo, Ewe, Tongu, Akwamu, Krachi, Gonja and Dagomba, each with their own cultural traditions, coexisted comfortably in the region." Graham 1985:135.

⁶³ Grant 1990.

⁶⁴ Guerrero 1992.

⁶⁵ Anti-Slavery Society 1983. Since the publication of this study the population of Indigenous Peoples in the Philippines has risen from the 4.7 million then estimated to a currently estimated 6-7 million.

⁶⁶ The Planning Commission's Seventh Five Year Plan (1985-90) put the figure at 40 per cent. However, a report prepared by Working Group on Development and Welfare of Scheduled Tribes for the 1990-95 Five Year Plan puts the figure higher – at 50 per cent. See: Government of India, Seventh Five Year Plan 1985-90, Vol. 1, Planning Commission, 1985, pp.18-19; Government of India, Report of the Committee on Rehabilitation of Displaced Tribals due to Development Projects, Ministry of Home Affairs, New Delhi, 1985. Working Group on Development and Welfare of Scheduled Tribes, Report for Eighth Five Year Plan (1990-1995), New Delhi, cited in Thukral, 1992.

⁶⁷ Comments made by N.C. Saxena, Secretary to the Planning Commission, at meeting to discuss draft National Resettlement and Rehabilitation Policy, New Delhi, 21 January 1999.

⁶⁸ Carino 1999.

⁶⁹ World Bank 1994: iii-iv.

⁷⁰ Thukral 1992.

⁷¹ Ackermann 1973:28.

⁷² Fearnside 1989; Gribel 1990.

⁷³ Statement to the WCD joint consultation on '*Dams, Indigenous Peoples and Ethnic Minorities*', Geneva, 31 July – 1 August 1999.

⁷⁴ Planners and water bureaucrats tend to view land merely as a commodity, one piece being easily exchanged with another or for cash. They may fail to comprehend its spiritual and emotional significance for many people, both indigenous and non-indigenous. Moving from one piece of land to another is thus seen as unproblematic. For example, Ernest Ravan of the International Institute for Hydraulic and Environmental Engineering notes: "Dams are not planned to submerge highly developed areas. Often the quality of life of the displaced indigenous population was low, and therefore could be an opportunity to improve living standards; the construction of large dams can sometimes prove such an opportunity. If the people prefer, however, to continue living as they have in the past, they can do so by moving upstream in the river valley" (Razvan 1992).

⁷⁵ Colchester 1986.

⁷⁶ Bennett et al. 1978:2.

⁷⁷ This mytho-poetic relationship to the land is well expressed by the quote from the Akawaio Indians of Guyana cited on page 2. For other examples see Moody 1988.

⁷⁸ Quoted in Burger 1987: 14.

⁷⁹ Statement of the United Kurdish Committee, London, July 2nd 1999; Balfour Beatty, the UK construction company bidding for the contract for the Ilisu Dam, variously puts the figure at "less than 15,000" and "12-16,000 people" (Balfour Beatty 1999a,b,c).

⁸⁰ World Bank 1982.

⁸¹ Morse and Berger 1992:68.

⁸² Morse and Berger 1992:79.

⁸³ Morse and Berger 1992:349.

⁸⁴ AfDB 1998.

⁸⁵ Burger 1990:98.

⁸⁶ Indigenous peoples and ethnic minorities often face particular problems in this regard due to their marginalised status within many societies. Where such peoples are pressing for recognition of their rights, they

may not be in a position to speak out openly against a project. The Ilisu dam is a case in point. With the Turkish State engaged in a undeclared civil war with Kurds in the region where the dam is to be built, local people are reported to be afraid to voice their concerns. The war has already killed 15,000 people and 3,000 villages have been destroyed in counter-insurgency operations. Draconian laws have also been introduced to stamp out the Kurds' identity: it is currently illegal to teach the Kurdish language or to give a child a Kurdish name. Hundreds of thousands of Kurds have fled the repression by migrating to neighbouring countries or to the West.

⁸⁷ Robbek 1999.

⁸⁸ Thukral 1992:22.

⁸⁹ Thukral 1992:65.

⁹⁰ Scudder pers. comm. 2 August 1999; Traisawasdichai 1996.

⁹¹ Quoted in Berger 1997, Annex 3:9; IRN 1999:37. The International Advisory Group, appointed to advise the World Bank on its handling of social and environmental issues on the project, has stated that it "has doubts about the effectiveness of consultations on the ground with the most vulnerable populations, particularly women and ethnic minorities (as required under OD's 4.20 and 4.30)." Its own direct contacts with these groups, though not extensive, suggest that the "level of comprehension of project proposals and their impacts is low".

⁹² Opaso 1999.

⁹³ Testimony presented by Pat Adams of Energy Probe to the US Senate Sub-Committee on Foreign Operations, 1 May 1986; Said 1997.

⁹⁴ Andrade 1992.

⁹⁵ Treece 1987.

⁹⁶ *Utusan Konsumer*, April:12-13; Chee Yoke Heong, 'Not on our land: aboriginals say of dam', *IPS*, 16 May 1999.

⁹⁷ Colchester 1985; 1987:11.

⁹⁸ ILO 1986: 'Report on the Committee of Experts, Observations Concerning Ratified Conventions', International Labour Conference, Provisional Record 31, 72nd session (No. 31/51-31/52). Exchanges between the ILO and the Indian Government have continued on this issue for the last 15 years. While the ILO has held to its opinion that adivasi's customary rights should be recognised for the purposes of compensation and rehabilitation, the Government of India has persisted in asserting that 'landless oustees' are 'encroachers' on State lands and not entitled to the same treatment as those with land titles. See for example 'Report of the Committee of Experts on the Application of Conventions and Recommendations', 1993:311-314.

⁹⁹ World Bank, 1984.

¹⁰⁰ Morse and Berger 1992:350.

¹⁰¹ Omvedt 1993.

¹⁰² Pittja 1994:54.

¹⁰³ Guerrero 1992.

¹⁰⁴ *United States v David Sohapp, Snr et al.*, 477 US 906 (1986), cert. denied. Cited in Guerrero 1992.

¹⁰⁵ Guerrero 1992.

¹⁰⁶ Hertlein 1999:8.

¹⁰⁷ Submission of the Grand Council of the Crees (Eyou Istchee) and the Cree Regional Authority to the Commission on Territorial Management of the National Assembly on the *Global Study of the Development of the Region of Northern Quebec*, 6 October 1978, p.5 http://www.gcc.ca/Political-Issues/positions/commission_on_territorial_management.htm

¹⁰⁸ Crees and Trees, An Introduction, p. 3. http://www.gcc.ca/Environment/forestry/crees_and_trees_an_introduction.htm.

¹⁰⁹ Shucking 1999: She also notes: "The actions of the authorities in Samraj are clearly illegal. According to India's Land Acquisition Act, written notice must be given, as well as a time period allowed for landowners to put forward objections before they can be expropriated. If the objection is overruled, they receive compensation for payments based on prices for similar land in the same area. Because the affected people in this case belong to the scheduled castes and scheduled tribes, there are additional legal provisions to protect their rights."

¹¹⁰ Oliver-Smith 1991:143; CHT Commission 1991:13. Many of those resettled were displaced twice - US engineers underestimated the size of the reservoir, resulting in many of the original resettlement sites being flooded.

¹¹¹ Fahim 1981: 73.

¹¹² Horowitz 1989.

¹¹³ Horowitz 1989; Scudder 1990.

¹¹⁴ Gunaratna 1998: 13.

¹¹⁵ Scudder 1990, 1994.

¹¹⁶ Bello et al. 1982.

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- ¹¹⁷ Pearce 1992.
- ¹¹⁸ Drucker 1984; Fay 1987.
- ¹¹⁹ Survival International News 1985 (7):1.
- ¹²⁰ Women Workers' Programme 1996:13.
- ¹²¹ World Bank 1993b.
- ¹²² Graham 1985:34.
- ¹²³ Thukral 1992:16.
- ¹²⁴ Bosshard 1998.
- ¹²⁵ King 1986.
- ¹²⁶ Thukral 1992:16.
- ¹²⁷ Karve E. and Nimbkar, J., A Survey of People Displaced Through the Koyna Dam, Deccan College, Pune, 1969. Cited in Thukral 1992:16.
- ¹²⁸ Rich 1994:43-46.
- ¹²⁹ Morse and Berger 1992.
- ¹³⁰ Partridge 1984.
- ¹³¹ Partridge 1984, Appendix 2:1. Recent NGO surveys suggest that more like 300,000 people will be displaced to make way for the Narmada Sagar project.
- ¹³² Discussing the general problem of resettlement, the World Bank acknowledges the differential impacts on men and women, arguing that women's lives tend to be worse disrupted than men's. "Women are harder hit by resettlement than men since they are more likely to earn their living from small businesses located at or near their residences. Women may also be affected disproportionately in rural areas since they are more often dependent on common property resources. For example, gardens may more frequently be on unregistered lands than fields owned by men". (World Bank 1984: 2/9).
- ¹³³ Hertlein 1999:9.
- ¹³⁴ Morse and Berger 1992.
- ¹³⁵ Hew Cheng Sim 1986:23.
- ¹³⁶ Colchester 1989:61.
- ¹³⁷ Carney 1988; Watts 1992.
- ¹³⁸ Scudder 1994.
- ¹³⁹ Thukral 1992:16.
- ¹⁴⁰ IRN 1999:47.
- ¹⁴¹ Colajacomo 1999.
- ¹⁴² Guggenheim 1993:205.
- ¹⁴³ Udall 1992.
- ¹⁴⁴ Udall 1992.
- ¹⁴⁵ World Bank 1993b.
- ¹⁴⁶ Stewart et al. 1996.
- ¹⁴⁷ Other social justice groups, such as the Berne Declaration, point out that the dam, as currently conceived, breaches World Bank's guidelines for development projects on 18 counts, including OD 4.30 on Involuntary Resettlement. There has been no consultation with affected people or local NGOs. No rehabilitation plans are place for those who would be ousted by the project. And no compensation package has been agreed. (Bosshard 1998).
- ¹⁴⁸ Quoted in Roy 1999.
- ¹⁴⁹ World Bank 1994.
- ¹⁵⁰ World Bank 1993:v.
- ¹⁵¹ World Bank, 1994:x.
- ¹⁵² World Bank 1994:4/3.
- ¹⁵³ World Bank 1993a; Pongsapich et al. 1992; Hubbel 1994.
- ¹⁵⁴ Scudder 1994.
- ¹⁵⁵ Cited in Chandler 1984.
- ¹⁵⁶ Grant 1990:83. Grant notes (p.83): "Overall, the black communities affected by TVA reservoir removal were not given substantial help in reordering their lives. Several regional planners with considerable power to approve or reject requests held racial views that did not allow for equal treatment of blacks . . . Even communities whose leaders conformed to local standards of acceptable behaviour were treated unequally."
- ¹⁵⁷ Grant 1990:82.
- ¹⁵⁸ 'Oustees of Nagarjunsagar dam after four decades: they kill the girl child to survive poverty and hardship', *Indian Express*, 4/9/1999.

- ¹⁵⁹ Dharmadhikary, S., Testimony to WCD Sri Lanka Hearings. The adivasi families displaced by Bargi were promised 2 hectares of replacement land each, even though their holdings had often been much larger than this. Because of incompetent surveying, many families had to be resettled twice after their new lands were submerged by the reservoir. Some of those displaced were moved to an 'ideal village' at Gorakhpur. Although the village had a hospital and a school, there were no medical staff and no teachers. Deprived of almost any means of subsistence, five people of starvation died in Gorakhpur between 1990 and 1992. (Daud 1993).
- ¹⁶⁰ Yashwant, S., "Bijasen, and Beyond: Driven away by Dams", *Frontline*, 30 July 1993.
- ¹⁶¹ Parasuram 1994:17.
- ¹⁶² Lokayan 1985; Srisailiam 1986:259.
- ¹⁶³ Submission to WCD Brazil Hearings.
- ¹⁶⁴ Submission to WCD Brazil Hearings.
- ¹⁶⁵ Testimony given to author in Madungandi in 1990.
- ¹⁶⁶ IRN 1999:37.
- ¹⁶⁷ Dennis 1997:14-15.
- ¹⁶⁸ Hirsch et al. 1992.
- ¹⁶⁹ Furer-Haimendorf 1982.
- ¹⁷⁰ Acreman and Hollis 1997.
- ¹⁷¹ Treece 1987.
- ¹⁷² Maninder Gill and Sandy Davis, pers. comm. 9 November 1999.
- ¹⁷³ Sayer 1991:44.
- ¹⁷⁴ *Down to Earth* No. 5 1989.
- ¹⁷⁵ Chandrasena 1993.
- ¹⁷⁶ Morse and Berger 1992: in 1994 the Narmada Bachao Andolan estimated that 40,000 adivasi would be affected by the compensatory wildlife sanctuaries in Sardar Sarovar project area ('Supreme Court of India Writ Petition'.
- ¹⁷⁷ Fearnside 1990:50.
- ¹⁷⁸ Open Letter from Berne Declaration to President Jaing Zemin, 19 March 1999.
- ¹⁷⁹ *South China Morning Post*, Thursday, 27 May 1999, 'Zhu breaches silence on Three Gorges Dam failures'.
- ¹⁸⁰ Carino 1999.
- ¹⁸¹ Robbek 1999.
- ¹⁸² In the early 1900s, the fortunes of the Pima and Maricopa O'Odham peoples of the Gila River Reservation plummeted as a result of the diversion of water from the Gila for use by white settlers – with the result that the Indians were deprived of water for their irrigated farming. The first decade of the 20th century is known by the Pimas and Maricopa O'Odham as the "black decade". Many other tribes have suffered similarly.
- ¹⁸³ Guerrero 1992.
- ¹⁸⁴ Letter from Ted Strong of the Columbia River Inter-Tribal Fish Commission, undated.
- ¹⁸⁵ Columbia River Inter-Tribal Fish Commission, "Altering the Dams: Restoring the ebb and flow of the river", n.d. There are now 29 dams in the Federal Columbia River Power System. The other 107 dams that affect salmon are either owned by the federal government or licensed by it.
- ¹⁸⁶ Columbia River Inter-Tribal Fish Commission, "Altering the Dams: Restoring the ebb and flow of the river", n.d.
- ¹⁸⁷ Columbia River Inter-Tribal Fish Commission 1998; Hollenbach and Ory 1999.
- ¹⁸⁸ Ortolano and Cushing 1999.
- ¹⁸⁹ Dharmadhikary, S., Testimony to WCD Sri Lanka Hearings
- ¹⁹⁰ Association of Producers for Communal Development of La Cienaga Grande de Loric (ASPROCIG), Submission to the World Commission on Dams for Sao Paulo Public Hearing, July 1999.
- ¹⁹¹ Statement by Carlos Figueroa of the Federacion de Indigenas del Estado Bolivar, Venezuela, to the World Commission on Dams (n.d.).
- ¹⁹² Colchester 1996.
- ¹⁹³ McCully 1996:40. Hydro-Quebec has since made an agreement with the affected Cree to compensate them for this serious problem
- ¹⁹⁴ Philip Raphals, 'The Hidden Cost of Canada's Cheap Power', *New Scientist* 15 February 1992:52.
- ¹⁹⁵ Joseph Milewski pers. comm. 20 September 1999 citing Chevalier, Dumont, Langlois and Penn 1977 and Dumont, Girard and Bellavance 1998.
- ¹⁹⁶ Raphals op. cit. note 196.
- ¹⁹⁷ Submission of the Grand Council of the Crees, 1 December 1999.
- ¹⁹⁸ Carino 1999.

- ¹⁹⁹ Colajacomo 1999. The InterAmerican Development Bank, which co-financed the Chixoy dam with the World Bank, initiated a watershed management and community development project in the Chixoy watershed in 1992 (IDB 1999).
- ²⁰⁰ Lewis and Knight 1995.
- ²⁰¹ Omvedt 1994.
- ²⁰² McKinnon and Bhruksasri 1986; McKinnon and Vienne 1990.
- ²⁰³ Cobo 1986; Colchester 1992.
- ²⁰⁴ Thornberry 1987:7.
- ²⁰⁵ Statement by Quilombo spokesperson, Oriel Rodrigues Moraes, to the WCD joint consultation on 'Dams, Indigenous Peoples and Ethnic Minorities' in Geneva, 31 July -1August 1999.
- ²⁰⁶ Colchester 1986.
- ²⁰⁷ Andrade 1992.
- ²⁰⁸ WCED 1987: 114.
- ²⁰⁹ Colchester 1997.
- ²¹⁰ Ferguson 1990.
- ²¹¹ Cited in Carino 1999.
- ²¹² Espeland 1998:1.
- ²¹³ Espeland 1998:205.
- ²¹⁴ Espeland 1998:208.
- ²¹⁵ Espeland 1998:216.
- ²¹⁶ O'Neill 1996 :99.
- ²¹⁷ Quoted in Burger 1987:14.
- ²¹⁸ Graham 1985:134.
- ²¹⁹ Morse and Berger 1992.
- ²²⁰ While accepting these problems, World Bank officials believe that cost-benefit analyses can be suitably modified to incorporate social and environmental values and can be particularly effective when they include prior consultations with those affected.
- ²²¹ *Guidelines – Environmental Impact Statement for the Proposed Great Whale River Hydroelectric Project*, Evaluating Committee et al., Aug. 28, 1992, pp. 3-4. The Guidelines were adopted unanimously by these five bodies, composed of representatives of the Cree, the Inuit, the Government of Canada and the Government of Quebec.
- ²²² Guidelines, pp. 4-7.
- ²²³ Ibid., p. 22.
- ²²⁴ *Joint Report on the Conformity and Quality of the Environmental Impact Statement for the Proposed Great Whale River Hydroelectric Project*, Provincial Review Committee et al., p. 3. <http://www.gcc.ca/Environment/hydro/background/conformity> report.htm.
- ²²⁵ Ibid., p. 65.
- ²²⁶ Ibid. p. 17.
- ²²⁷ Submission of the Grand Council of the Crees to the WCD, 1 December 1999.
- ²²⁸ INSAN 1996; WRM/Forests Monitor 1998; Gabungan 1999.
- ²²⁹ Paul Joffe and Mary Ellen Turpel, quoted in Grand Council of the Crees (Eeyou Astchee), *Never Without Consent*, ECW Press, 1998, pp. 121-122.
- ²³⁰ Submission by the Grand Council of the Crees to the WCD, 1 December 1999.
- ²³¹ Scudder 1994.
- ²³² Statements to the WCD Joint Consultation on 'Dams, Indigenous Peoples and Ethnic Minorities', Geneva, 31 July-1 August 1999; Corbett 1999; Hertlein 1999; Anguita 1999.
- ²³³ World Bank 1993: iii.
- ²³⁴ World Bank 1993:15.
- ²³⁵ World Bank 1993: iv and 14.
- ²³⁶ World Bank 1993: ii.
- ²³⁷ World Bank 1993: 8.
- ²³⁸ Coady, P., Statement to World Bank Board Meeting, 23 October 1992.
- ²³⁹ Rich 1994:148ff.
- ²⁴⁰ The distinction between private and public-sector dam building is not always easy to make. Many dams are built by private companies on 'build, operate and transfer' contracts with government agencies
- ²⁴¹ Rich 1994; Hildyard 1999.
- ²⁴² Ahuja et al, 1997:9. Between 1975 and 1995, for example, the proportion of East Asians living in absolute poverty declined from 60 per cent to 20 per cent, whilst the number of poor in the region fell by half: from 720

million to 345 million. Some of these gains, however, have been lost to the recent South East Asian economic collapse.

²⁴³ Sadie 1960:302.

²⁴⁴ Etonga-Manguelle 1991.

²⁴⁵ Ohno 1997: 13.

²⁴⁶ Agarwal and Narain 1997.

²⁴⁷ LeMoigne et al. 1991.

²⁴⁸ Goldsmith and Hildyard 1984: Vol 1.

²⁴⁹ McCully 1996; Usher 1997.

²⁵⁰ *General Recommendations of the Committee on the Elimination of Racial Discrimination XXIII (51) concerning Indigenous Peoples*, CERD/C/51/Misc 13/Rev.4.

²⁵¹ Thukral and Sakate 1992:143-154.

²⁵² Dozier 1966:212ff.

²⁵³ Regpala 1990.

²⁵⁴ Diaz de Jesus and Jesus Alejandro 1999.

²⁵⁵ Khera and Mariella 1982; Guerrero 1992; Hertlein 1999; Hydro-Quebec 1999.

²⁵⁶ Shripad Dharmadhikary Testimony to WCD Sri Lanka Hearings.

²⁵⁷ See, for example: Association of Producers for Communal Development of La Cienaga Grande de Lórica (ASPROCIG), Submission to WCD Public Hearings, Sao Paulo, July 1999. ASPROCIG notes of those affected by the Urrea Dam in Colombia: "Urrea S.A. and the Colombian government have totally refused to allow the affected communities to participate in decision making about the construction of the dam. It is only through their own actions, international pressure and the ruling of the constitutional court that Urrea SA and the Environment Ministry have taken timid steps toward consulting those affected."

²⁵⁸ McCully 1996:7.

²⁵⁹ Khera and Mariella 1982.

²⁶⁰ Guerrero 1992.

²⁶¹ Michael Swan, an attorney involved in western water rights litigation for the US Interior Department, quoted in Guerrero 1992:207.

²⁶² Quoted in Guerrero 1992:208.

²⁶³ Schucking 1999.

²⁶⁴ Delphi International 1996; INSAN 1996.

²⁶⁵ New private sector standards are also being adopted by other sectors. For a discussion of indigenous peoples and oil development see Tomei 1998.

²⁶⁶ IFC 1998:3 emphasis added.

²⁶⁷ ICOLD 1997 emphasis added.

²⁶⁸ Canada 1996:41-42 cited in Hydro-Quebec 1999:12.

²⁶⁹ Hydro-Quebec 1999 emphasis added. As noted in Section I, Canadian practice obliges Hydro-Quebec to seek consent for its schemes. Its failure to gain such consent in the Grande Baleine project, after a substantial investment in project planning and impact assessments, has made the company very aware of the need to work closely with affected communities if it is to secure the outcome that it desires.

²⁷⁰ Hydro-Quebec 1999: Corfa and Milewski 1998:10.

²⁷¹ Submission of the Grand Council of the Crees to the WCD, 1 December 1999.

²⁷² Hydro-Quebec 1999.

²⁷³ Corfa and Milewski 1998:8.

²⁷⁴ Statement by Real Courcelles of Hydro-Quebec to the WCD Joint Consultation on 'Dams, Indigenous Peoples and Ethnic Minorities', Geneva, 31 July –1 August 1999; Joseph Milewski pers. comm. 20 September 1999.

²⁷⁵ Hydro-Quebec, *L'aménagement Sainte-Marguerite-3: "En accord avec le milieu"*, <http://www.assnat.qc.ca/fra/publications/debats/journal/ch/991109/1410.htm#991109029>. Hydro-Quebec, *Amenagement hydro-electrique Sainte-Marguerite-3: Etude complementaire en reponse a la condition 3 du decret gouvernemental*, January 1995.

²⁷⁶ Hydro-Quebec 1999:3-4.

²⁷⁷ Bosshard 1999.

²⁷⁸ Butcher 1971.

²⁷⁹ Pua-Villamor and Ocampo 1996.

²⁸⁰ Sarawak Museum 1979.

²⁸¹ King 1986; Hew Cheng Sim 1986; Colchester 1989:59-61;

²⁸² eg International Alliance 1992.

²⁸³ IDB 1985:30-31.

²⁸⁴ IDB 1996.

²⁸⁵ And see letter from the IDB to the WCD published below.

²⁸⁶ IDB 1998:2, 23-24. IDB staff had initially sought to include a provision in the policy stating that IDB projects should not require the involuntary resettlement of indigenous people at all. However, this was overruled by the board and, at the insistence of the government of Brazil, the term 'Indigenous Peoples' was substituted with the term 'indigenous communities'. A draft 'strategy' on Indigenous Peoples is currently in preparation.

²⁸⁷ AfDB 1998:8 emphasis added.

²⁸⁸ AfDB 1998:14.

²⁸⁹ World Bank staff expressed these views at the joint WCD/World Bank seminar held in Washington DC on 1 November 1999 to discuss this draft paper. Staff are particularly uncertain about **how** consent is assured and believe that the Canadian experience may not be replicable in countries with different political, cultural and juridical traditions. See also IFC 1998.

²⁹⁰ Kingsbury 1999.

²⁹¹ About 42 individuals attended the consultation in Geneva (see annex 2). The meeting which was co-sponsored by the World Commission on Dams, the Forest Peoples Programme, the World Council of Churches, the International Work Group for Indigenous Affairs, the United Nations Office of the Commissioner for Human Rights and the TebTebba Foundation received additional support from Novib. The meeting included representatives of these agencies, the International Labour Organisation, representatives of indigenous peoples and ethnic minorities, industry, one para-statal organisation and a number of NGOs. Representatives of governments and multilateral development banks had been invited to the meeting but declined to attend.

²⁹² E/CN.4/Sub.2/1997/14.

Annex 1: Text of E/CN.4/Sub.2/1997/14.

Guidelines relating to transnational corporations and indigenous peoples submitted by the Indigenous Preparatory Meeting.
26-27 July 1997

PREAMBLE

Guided by the purposes and principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights, and with the understanding that indigenous peoples have the right to their lands, territories and resources which must be recognised and respected, and with the knowledge that transnational corporations have gained much of their power, position and profit by the exploitation of these resources, we believe that they will willingly respect the following proposed guidelines:

1. CONSENT

International Corporations should gain the free and informed consent of indigenous peoples prior to initiating or implementing development activities which directly or indirectly affect the lands, territories and resources of the peoples concerned.

2. CONSULTATION

International Corporations should consult with and directly involve indigenous communities and their representatives in all stages of planning, assessment, implementation and conclusion of proposed development activities, to ensure that their economic, social, cultural and political rights and activities are not adversely affected by the proposed development activities.

3. WRITTEN AGREEMENTS

International Corporations should negotiate and secure written agreements from the indigenous peoples concerned including, but not limited to, the implementation phases, assessed ramifications and profit sharing arrangements, prior to initiation of any development activities.

(Transnationals should be encouraged to provide financial assistance to indigenous peoples to ensure that the peoples concerned have full access to and ability to engage experts and resource persons as members of their negotiating teams, if they so desire. Such experts shall be vetted and engaged by indigenous peoples directly.)

4. COMPENSATION

International Corporations should negotiate with the indigenous communities a just and fair profit-sharing arrangement, prior to signing of any kind of agreement, and with full disclosure of the projected profit and complete development plans for the relevant project, to ensure that the peoples concerned receive an equitable profit share and/or compensation package.

5. MONITORING AND RECOURSE

International Corporations should have ongoing meetings with the indigenous peoples concerned, throughout the duration of the project, to ensure their direct role in the monitoring of all stages and effects of the project. They should provide a recourse mechanism to deal with possible disagreements over the provisions of written agreements between indigenous peoples and transnational corporations. Such a body should ensure the direct participation of the indigenous peoples concerned and give full and immediate effect to its decisions and conclusions.

6. ANOMALIES

In the case of circumstances in which problems occur which were not part of the original assessment impact report, International Corporations should make immediate restitution for life, land and/or property and other damages that may have been caused accidentally or through negligence.

7. TRANSPARENCY

Transnationals should make public, through their annual reports, the economic, environmental and social impact on the communities in which they work, data on indigenous equity participation and, where relevant, compensation packages and response times to effect compensation or restitution.

Transnational must make transparency and public accountability a cornerstone of their public relations policies and, in particular, in all matters of their relations with indigenous peoples. This will lead to public trust in companies, their policies and their products.

All corporations should adopt environmental policies which form part of their corporate responsibility. These environmental standards should be developed in consultation with the communities affected and be rigorously applied to indigenous areas, regardless of the status of indigenous peoples within the relevant state.

8. ACCOUNTABILITY

Human rights issues are not an internal matter but a matter of concern to the entire international community. The transnationals that work in the countries where there are no internal legal frameworks and/or administrative mechanisms that are capable of enforcing and/or providing such involvement of indigenous communities should accept a constructive obligation to respect the guidelines and the fundamental human rights of indigenous peoples.

9. FINANCIAL INSTITUTIONS

All financial institutions should insist on an independent environmental assessment report prior to agreeing to funding projects. These should include:

- a) the ecological, social, cultural and economic impact on indigenous communities and peoples;
- b) Recommendations to eliminate or minimise negative, impacts; and
- c) Provisions for foreclosure of loans if these recommendations are not fully implemented.

10. SUPPORT

Within the "new partnership" as adopted by the General Assembly in its resolutions, we request from the High Commissioner for Human Rights to support financially and assist us to ensure that we can develop, adopt and implement full guidelines before the year 2000.

Annex 2: Participants in the Geneva Consultation

CONSULTATIVE MEETING ON DAMS, INDIGENOUS PEOPLES AND ETHNIC MINORITIES

Geneva 31 July – 1 August, 1999
World Council of Churches
150 Route de Fernay, Geneva, Switzerland

PARTICIPANTS LIST

Devasish Roy	Bangladesh
Oriel Rodrigues Moraes	MAB, Brazil
Real Courcelles	Hydro Quebec , Canada
Luke Hertlein	Protecting Aboriginal Rights, Land and the Environment (PARLE), Canada
Aldisson Anguita	Mapuche Community, COMEX, Chile
Cristobal Osorio Sanchez	Rio Negro Community, Guatemala
Kanakeswar Narzary	President UBNLF, India
Bineet Mundu	India
Ratnaker Bhengra	India
Thangmawia	Chairswan Society, India
Maria Mangte	Indian Confederation of Indigenous & Tribal Peoples, India
Mr Rozathang	General Secretary, ZO-Re-Unification, India
Derhagra Mocharhary	India
Prithibi Majhi	India
Deva Kanta Ramchiary	India
Jebra Ram Muchahary	Tribal Welfare Society, India
Ram Dayal Munda	Tribal and Regional Languages, India
Robi Lal Basumatary	India
Robert Mandosin	The Irian Jaya Environment Foundation, Irian Jaya
Jaroslava Colajacomo	Reform the World Bank, Italy
Andrew Corbett Norman Tjombe	Legal Assistance Centre, Namibia

Maongo Hembinda	Himba representative, Namibia
Ande Somby	Law Faculty, Tromso University, Norway
Joji Carino	WCD Commissioner (Tebtebba Foundation, Philippines)
Jill Carino	Cordillera Peoples' Alliance for the Defense of Ancestral Land and for Self-Determination (CPA), Philippines
Victoria Tauli-Corpuz	Tebtebba Foundation, Philippines
Raymond Rovillos	Philippines
Konstantin Robbek	The Institute on the Problems of The Northern Minorities of Sakha Republic (Russia)
Achim Steiner	World Commission on Dams, South Africa
S. Parasuraman	World Commission on Dams, South Africa
Fiona Archer	South African San Institute (SASI), South Africa
Lars-Anders Baer	Sami Council, Sweden
Julian Burger	Office of the High Commissioner on Human Rights United Nations, Switzerland
Chandra Roy	International Labour Organisation Project for Indigenous and Tribal Peoples, Switzerland
Eugenio Poma	World Council of Churches, Switzerland
Michael Robertson	ABB Corporate Management Services, Switzerland
Cassani Alain	Switzerland
Jodi Nishima	Switzerland
Diwata Olalia Hunziker	WWF International, Switzerland
Monica Castelo	Interpreteur, Switzerland
A-Wu Ligerlal	Paiwan People of Pingtung, Taiwan
Marcus Colchester	Forest Peoples Programme, UK
Louise Henson	
Maurizio Ferrari	
Shelina Thawer	Minority Rights Group International, UK
John Stevens	USA
William Fisher	USA

Rebecca Fan USA

Mary Coyle USA

