

# Indigenous Peoples and the oil and gas industry

Context, issues and emerging good practice

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The global oil and gas industry association for environmental and social issues

5th Floor, 209–215 Blackfriars Road, London SE1 8NL, United Kingdom

Telephone: +44 (0)20 7633 2388 Facsimile: +44 (0)20 7633 2389

E-mail: [info@ipieca.org](mailto:info@ipieca.org) Internet: [www.ipieca.org](http://www.ipieca.org)

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## Foreword

IPIECA formed a Social Responsibility Working Group (SRWG) in 2002 to share good practice on social responsibility issues including human rights, social impact assessment in countries where our industry is active, and community outreach.

The SRWG gives IPIECA members a unique forum in which to share information and coordinate responses to some of the social responsibility issues and challenges surrounding the oil and gas industry.

In 2008, the SRWG established a task force to examine Indigenous Peoples issues relating to the oil and gas sector. The objectives of the task force were to focus on these issues at an industry level and to share lessons from the various interactions that member companies have with indigenous groups.

This issues review, *Indigenous Peoples and the oil and gas industry: Context, issues and emerging good practice* was commissioned by the task force to provide a summary of the policy and legal context, and an overview of key issues and emerging good practices for the oil and gas industry's interface with Indigenous Peoples. As such, it is intended to be a reference tool for companies seeking an overview of the issues they may face when operating in areas where Indigenous Peoples live, or which they customarily use, and to provide an understanding of trends in company interactions with Indigenous Peoples. It is not intended to be an industry standard or to provide detailed guidelines for companies.

The document is organized along the following lines:

- The **Introduction** outlines the rights of Indigenous Peoples and some of the reasons why these warrant special consideration by oil and gas companies.
- The section entitled **Overview of Indigenous Peoples and the oil and gas industry** provides an overview of Indigenous Peoples and the policy and regulatory context relevant to the sector's interaction with them.
- The section on **Key issues: engagement, impacts and opportunities** provides a summary of some of the issues for oil and gas companies to specifically consider when operating in areas used or occupied by Indigenous Peoples, set around the three themes of consultation and engagement, key issues to manage, and benefits sharing.
- The **Summary of emerging good practice** provides a summary of good practice considerations that have emerged from oil and gas companies' interactions with Indigenous Peoples.

The document was revised in February 2012.

### **Acknowledgements**

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## Introduction

The oil and gas industry and Indigenous Peoples have been increasingly coming into contact with each other over the past few decades as the search for new oil and gas resources has engendered more exploration and development in lands that Indigenous Peoples traditionally occupy or customarily use. Although oil and gas companies need to consider all social groups and communities who are situated close to, and are impacted by, their operations, Indigenous Peoples are distinct social groups that warrant special consideration.

Indigenous Peoples hold specific rights under international law and in many national legislative contexts. While it is the responsibility of governments to uphold and protect Indigenous Peoples' rights, international policy makers, indigenous advocates and wider civil society expect companies to respect these rights. Furthermore, Indigenous Peoples typically have cultures and ways of life that are distinct from the wider societies in which they live: they are often reliant on the land and its natural resources for their livelihoods; they may also have strong cultural, spiritual and economic ties to their land; and in some parts of the world, Indigenous Peoples have suffered from a history of discrimination and exclusion that has left them on the margins of the larger societies in which they live.

These characteristics can expose Indigenous Peoples to different types of development challenges and impacts as oil and gas projects are developed in their territories, as compared to other social communities. At the same time, investment in such projects has the potential to generate benefits and development opportunities for Indigenous Peoples. This document therefore seeks to address some of the potential issues, impacts and opportunities that companies may need to consider when interacting in areas used or occupied by Indigenous Peoples.

A number of potential business drivers can be identified that guide the response of the industry in addressing these challenges, including:

- **Legal compliance:** In some countries, national law may require businesses to adhere to particular legal standards where Indigenous Peoples are affected by projects.
- **Access to land:** Indigenous groups may have legally recognized ownership or control over the land, territories and resources that oil and gas companies are seeking to access.
- **Accessing international financing:** Many international financing institutions have specific lending requirements relating to Indigenous Peoples, for example through the Equator Principles (see *International finance institutions* on page 8).
- **Protecting investments:** Irresponsible development with respect to Indigenous Peoples can expose a company to financial, operational, legal, and reputational costs and risks.
- **'Social licence to operate':** Indigenous Peoples expect companies operating on their lands to respect their rights, mitigate any adverse impacts and provide opportunities for communities to benefit from their presence. It can be difficult for a company to obtain official permits or operate successfully in indigenous areas if the company is unable to gain and maintain community support. Further, without the support of the indigenous communities, companies may miss opportunities to benefit from local experience, skills and knowledge that can add value to a project's development.
- **Compliance with international law and policy:** International organizations such as the United Nations (UN), the International Labour Organization (ILO) and the World Bank have recognized Indigenous Peoples as having distinct rights. These institutions have adopted policies concerning indigenous rights, which create expectations and, in some cases, requirements on how company interactions with Indigenous Peoples should be handled.
- **Competitive advantage:** Doing business in a manner that respects Indigenous Peoples may enhance relationships with host governments and communities, and provide a competitive



advantage when seeking access to new business opportunities, as reported by some companies in this review.

- **Societal expectations of good corporate citizenship:** Operating responsibly in areas of Indigenous Peoples can be considered one element of a company's broader commitment to corporate social responsibility and ethical conduct. Shareholders, international policy makers, news media and other civil society

actors often expect corporations to act as good citizens, going beyond compliance with national law where such requirements do not exist.

## Overview of Indigenous Peoples and the oil and gas industry

### Who are Indigenous Peoples?

The term 'Indigenous Peoples'<sup>1,2</sup> has been applied to, or claimed by, peoples who consider themselves to be the descendants of the pre-colonial peoples of the Americas, Australia, New Zealand and the circumpolar Arctic, such as the wide variety of groups living in the Amazon, Native Americans in the USA, Inuit of the Arctic, Aboriginal Australians and the New Zealand Maoris. Furthermore, in various Asian and African countries, marginalized minority ethnic groups (often described as 'tribal populations') with a culture distinct from the national model and who have historically occupied certain regions, also define themselves as Indigenous Peoples (for example the hill tribes in Thailand and the Ainu in Japan).

Indigenous Peoples have come to be recognized over the past few decades as a distinct social and cultural group under international law and in some countries' national law. The degree of recognition of Indigenous Peoples varies widely across different countries. In countries such as Canada, the USA, Australia, and most Latin American countries, Indigenous Peoples are officially recognized in law. However, in some countries, only certain groups are recognized as 'indigenous' though other groups might claim that designation, and in other countries indigenous groups are not officially recognized at all. While there is variation across different national contexts, the adoption of the UN Declaration and the ILO Convention on Indigenous Peoples suggests a trend toward greater recognition of indigenous rights.



<sup>1</sup> This section has drawn from several public resources, including the website of the international human rights NGO International Work Group for Indigenous Affairs: [www.iwgia.org](http://www.iwgia.org); the ICMM *Good Practice Guide on Mining and Indigenous Peoples*; Jose Martínez Cobo's *Study of the Problem of Discrimination Against Indigenous Populations* ([www.un.org/esa/socdev/unpfii/en/spdaip.html](http://www.un.org/esa/socdev/unpfii/en/spdaip.html)); and the website of the UN Permanent Forum on Indigenous Issues: [www.un.org/esa/socdev/unpfii/index.html](http://www.un.org/esa/socdev/unpfii/index.html).

<sup>2</sup> For a comprehensive overview of Indigenous Peoples in the world today see the UN 2009 report, *State of the World's Indigenous Peoples*: [www.un.org/esa/socdev/unpfii/documents/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf).



The term 'Indigenous Peoples' has come to encompass a great diversity of peoples and cultures, and it is partly due to this diversity that there is no internationally recognized legal definition of 'Indigenous Peoples'.<sup>3</sup> According to the UN there are more than 370 million Indigenous Peoples in some 70 countries worldwide today. However, notwithstanding their differences, Indigenous Peoples are considered to have many similarities between their historical experiences, structural positions within their respective nation-states, interests, aspirations and grievances.



The UN and the ILO have outlined various defining inclusive characteristics of Indigenous Peoples, aiming to encompass the diversity of Indigenous Peoples worldwide whilst still separating them from other minorities, and have particularly emphasized the importance of self-identification<sup>4</sup>. These characteristics, which are considered to be partly and/or fully attributable to Indigenous Peoples, are:

- self-identification as indigenous;
  - occupation and use of a specific territory prior to the arrival of other groups;
  - collective attachment to specific lands;
  - a common experience of marginalization and discrimination;
  - distinct cultural, economic, social and/or political systems;
  - a distinct language; and
  - the aspiration to transmit to future generations their lands, and their distinct culture and identity.
- Indigenous Peoples can therefore be considered as a distinct category of stakeholder for oil and gas companies for the following broad reasons:
- **Legal:** They have particular rights under international law and in many national legislative contexts. These rights may entitle them to have a say in whether industrial development can be carried out on their land.
  - **Historical:** They have usually experienced a particular history of marginalization and discrimination, which can still affect their relationship with the government and the wider society they live in.
  - **Cultural:** They will often have distinct cultural, economic and political practices.
  - **Land and natural resources:** They will usually have a particular attachment to their land and ancestral territories, and a dependency on their natural resources. Indigenous groups may use a far wider territory than just the lands in the immediate vicinity of their villages, and even if they are fully integrated into the wider market economy, may still practice some form of subsistence economy linked to their lands.
  - **Political:** Most Indigenous groups have their own political representative organizations that companies may need to engage with directly.

<sup>3</sup> The issue of setting a single definition for 'Indigenous Peoples' has been extensively debated in United Nations working group sessions over the years, and it has come to be officially accepted that no single definition can fully capture the diversity of Indigenous Peoples.

<sup>4</sup> The two most commonly cited international documents on the definition of Indigenous Peoples are the UN Special Rapporteur Jose Martínez Cobo's *Study of the Problem of Discrimination Against Indigenous Populations* ([www.un.org/esa/socdev/unpfii/en/spdaip.html](http://www.un.org/esa/socdev/unpfii/en/spdaip.html)) and the ILO Convention 169.



Indigenous Peoples have been organizing themselves politically for several decades, and Indigenous Peoples' representative political bodies can be found at: the **local level** (representing individual tribes, bands or peoples, for example the Asamblea del Pueblo Guaraní de Bolivia (APG), the New Brunswick Aboriginal Peoples Council in Canada, or the Federación Interprovincial de Centros Shuar in Ecuador); the **sub-national regional level** (for example La Confederación de Pueblos Indígenas de Bolivia (CIDOB), or the Kimberley Land Council Aboriginal Corporation (KLC)); the **national level** (such as the Assembly of First Nations (AFN) in Canada, the Consejo Nacional Indio de Venezuela (CONIVE), the Confederación de Nacionalidades Indígenas del Ecuador (CONAIE), or the Russian Association of Indigenous Peoples of the North (RAIPON)); and at the **wider regional level** (including the Amazonian indigenous organization Consejo de Organizaciones Indígenas de la Cuenca Amazónica (COICA), or the Inuit Circumpolar Council (ICC), which represents Inuits in Alaska, Canada, Greenland, and Chukotka (Russia)).

At the UN level, the Permanent Forum on indigenous issues is an advisory body to the Economic and Social Council, with a mandate to: provide expert advice and recommendations on indigenous issues to the UN system through the Council; raise awareness and promote the integration and coordination of relevant activities within the UN system; and prepare and disseminate information on indigenous issues. The Forum holds annual, two-week conferences in which Indigenous Peoples' organizations are invited to participate and present their views.

## Policy and regulatory context

Indigenous rights are a type of collective human right specifically for Indigenous Peoples. International human rights instruments protect the rights of individuals; however international law recognizes that Indigenous Peoples also have specific rights to protect their survival as a group.

Indigenous rights movements have been mobilizing over the past few decades to have their rights recognized by states, the international community and multilateral institutions, and business corporations. This has resulted in rapidly developing international and intra-national policy and regulation concerning Indigenous Peoples in recent years. There are now international treaties, policy statements and declarations, conditions imposed by international finance institutions and other funding agencies, including private-sector banks, national bodies of law, and company and industry policies, which take account of, and promote, Indigenous Peoples' rights. The following section outlines this context and some of its key documents and initiatives.

## International regulation and policy

Within the international legal framework for the protection of the rights of Indigenous Peoples there are two main instruments:

- The **ILO Convention on Indigenous and Tribal Peoples (No. 169)**,<sup>5</sup> adopted in 1989: ILO 169 is a legally binding treaty which, when ratified by individual countries, becomes part of national law.<sup>6</sup> ILO 169 has to date been ratified by 20 countries (a large majority of these are in Latin America).<sup>7</sup> Since its adoption, Convention

<sup>5</sup> [www.ilo.org/public/english/region/ampro/mdtsanjose/indigenos/derecho.htm](http://www.ilo.org/public/english/region/ampro/mdtsanjose/indigenos/derecho.htm)

<sup>6</sup> ILO 169 replaced the previous 1957 Indigenous and Tribal Populations Convention (No. 107). Though certain countries are still signatories of ILO 107, ILO 169 is the only one open to ratification today.

<sup>7</sup> Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Nepal, The Netherlands, Norway, Paraguay, Peru, Spain, Bolivarian Republic of Venezuela.

No. 169 has been crucial in shaping national laws and policies regarding Indigenous and Tribal Peoples. It covers a wide range of issues, including land rights, access to natural resources, health, education, vocational training and conditions of employment. The fundamental principle of the Convention is that Indigenous and Tribal Peoples should be consulted, and participate fully at all levels of decision-making processes that concern them. The ILO international labour standards, including ILO 169, are backed by a supervisory system that aims to ensure that countries implement the conventions they ratify. The supervisory system has received numerous complaints over the years from Indigenous Peoples over the conduct of companies. These complaints have formed part of the supervisory bodies' reviews and reports, though their ultimate recommendations are directed only towards governments.

- The **United Nations Declaration on the Rights of Indigenous Peoples**,<sup>8</sup> adopted in 2007: The UN Declaration on the Rights of Indigenous Peoples was adopted in 2007 by the General Assembly of the United Nations with a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine).<sup>9</sup> The Declaration is not a convention, and therefore is not legally binding, however it has become a primary point of reference for many indigenous groups and their advocates around the world.

Both instruments cover a range of indigenous collective rights and State obligations towards Indigenous Peoples. There are, however, some differences between the contents of the two documents. Though the UN document draws out similar rights and responsibilities as ILO 169, its content is more explicitly focused on rights, whereas the content of ILO 169 is more explicitly focused on the responsibilities of States. The UN document accordingly extends a broader and stronger set of rights in relation to culture, self-determination, land and resource use, and puts more emphasis on the need to seek the consent of Indigenous Peoples in relation to any decisions that might affect them. However, there are a number of principles and rights outlined in both ILO 169 and the UN Declaration that may have implications for oil and gas projects taking place in areas inhabited by Indigenous Peoples, including:

- Indigenous Peoples should be consulted in an effective way whenever development activities are being planned or executed in their lands, and that they should participate in the planning, implementation and evaluation of these activities (UN Declaration: Articles 18, 23, 32; ILO 169: Articles 6, 7, 15).
- Indigenous Peoples have rights to the lands which they traditionally occupy, including their natural resources. They may have these rights even when the country concerned has not yet identified the lands or the rights they have (UN Declaration: Article 26; ILO 169: Articles 13 to 19).
- In cases of resource extraction projects taking place on Indigenous lands, Indigenous Peoples have the right to participate in the benefits of such projects and to be fairly compensated for any damages which they may sustain as a result of such activities (UN Declaration: Articles 28, 32; ILO 169: Article 15).

<sup>8</sup> [www.un.org/esa/socdev/unpfii/en/declaration.html](http://www.un.org/esa/socdev/unpfii/en/declaration.html)

<sup>9</sup> Since its adoption, Australia and New Zealand have reversed their positions and now endorse the Declaration. Colombia and Samoa have also reversed their positions and indicated their support for the Declaration. In November 2010, the Government of Canada endorsed the UN Declaration and, in April 2010, the United States indicated that it will also review its position regarding the Declaration. For further updates see the website of the UN Permanent Forum of Indigenous Peoples: [www.un.org/esa/socdev/unpfii/en/declaration.html](http://www.un.org/esa/socdev/unpfii/en/declaration.html)





- The social, cultural, religious and spiritual values and practices of Indigenous Peoples should be recognized and protected (UN Declaration: Articles 5, 12, 13, 20, 25, 31; ILO 169: Article 5).
- Indigenous Peoples have the right to participate in the use, management and conservation of the natural resources on their lands (UN Declaration: Articles 26, 29; ILO 169: Article 15).
- Indigenous Peoples should not be resettled from their lands without their free and informed consent (UN Declaration: Articles 10; ILO 169: Article 16). (See *Resettlement* on page 26 for further information on Indigenous Peoples and resettlement.)

Although these instruments are directed towards the State's duty to protect and enforce these rights, and therefore are not legally binding on companies, some companies have made a commitment to respecting ILO 169 in their company policy (either in relation to human rights in general or Indigenous Peoples specifically). Additionally, as both ILO 169 and the UN Declaration are frequently invoked by indigenous activists and their supporters as examples of existing international norms, it may be considered beneficial for companies to conduct their affairs in the spirit of both documents.

Furthermore, in line with the work carried out by the Special Representative of the UN Secretary-General (SRSG)<sup>10</sup> on Business and Human Rights, Professor John Ruggie, and the 'Protect, Respect and Remedy' framework, the responsibility of companies to respect human rights (including indigenous rights) is increasingly becoming clarified and accepted. Indeed, the SRSG has proposed a policy framework for business and human rights based on three pillars: the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and greater access by victims to effective remedies. The corporate responsibility to respect human rights means acting

with due diligence to avoid infringing on the rights of others. According to the SRSG, what this means in practice is a due diligence process whereby companies become aware of, prevent and address adverse human rights impacts. Key elements of corporate human rights due diligence include a statement of policy, regular assessment of the potential for impacts on human rights, integration of the respect for human rights into the core activities of a business, and tracking and reporting on human rights performance. In addition, the application of grievance mechanisms links the corporate responsibility to respect with the SRSG's third pillar, access to remedy (see *Engagement: Consultation, Participation and Grievance Management* on page 16 for further information). The UN Guiding Principles for Business and Human Rights, proposed by the former SRSG of the UN Secretary General, Professor John Ruggie, that were unanimously endorsed by the UN Human Rights Council in June 2011, further elaborate on these aspects.

### International finance institutions

International financial institutions such as the World Bank, the International Finance Corporation (IFC), regional development banks and many private banks have adopted policies concerning Indigenous Peoples. These policies do not form part of international law; however, they contain conditions set by the financial institutions which relate to the provision of financial loans for projects, including those affecting Indigenous Peoples. Companies receiving finance from these institutions are obliged to satisfy these conditions in relation to projects that impact Indigenous Peoples. In particular, the IFC's Performance Standards are often used as a reference for environmental and social performance by companies and their stakeholders, including Performance Standard 7 on Indigenous Peoples (see below), even where they are not receiving finance directly from the IFC.

<sup>10</sup> See [www.business-humanrights.org/SpecialRepPortal/Home](http://www.business-humanrights.org/SpecialRepPortal/Home)



The following list summarizes some of the key policies and guidelines applied by international finance institutions to projects that affect Indigenous Peoples:

- The **IFC Performance Standard 7 on Indigenous Peoples (PS7)**<sup>11</sup> (2012): This standard, which is part of a set of eight social performance standards, applies to any private sector project seeking IFC financing. These Performance Standards define companies' roles and responsibilities for managing their projects and minimizing their impact on the environment and on affected communities. The IFC Performance Standards are considered to be key social performance standards for the private sector and have been used as the basis for most other financial institutions' policies and internal company policies. The stated objectives of PS7 as it applies to private sector projects are to:
  - ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture and natural resource-based livelihoods of Indigenous Peoples;
  - anticipate and avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not possible, minimize and/or compensate for such impacts;
  - promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally-appropriate manner;
  - establish and maintain an ongoing relationship based on Informed Consultation and Participation (ICP) with the Indigenous Peoples affected by a project throughout the project's life cycle;

- ensure that the right of affected communities of Indigenous Peoples to Free, Prior and Informed Consent (FPIC) is upheld when the circumstances described in this Performance Standard are present; and
- respect and preserve the culture, knowledge, and practices of Indigenous Peoples.

PS7 is also accompanied by **Guidance Notes**.<sup>12</sup>

- The **World Bank Operational Directives (OD) 4.10 on Indigenous Peoples**<sup>13</sup> (2005): This standard, which is part of the Bank's social safeguard policies, applies to public sector projects, which have World Bank funding (this can include public private partnership projects) and replaces the earlier policy (OD 4.20, Indigenous Peoples). OP/BP 4.10 applies to all investment projects for which a Project Concept Review took place on or after 1 July 2005. Similar to IFC PS7, the standard stresses the need for borrowers to identify Indigenous Peoples, consult with them, promote their participation in, and benefit from, Bank-funded operations in a culturally appropriate way, and ensure that adverse impacts on them are avoided, or where avoidance is not feasible, minimized or mitigated.
- The **European Bank for Reconstruction and Development (EBRD) Performance Requirement 7**<sup>14</sup> (EBRD Environmental and Social Policy, 2008): The EBRD Performance Requirement 7 (PR7) is closely aligned with the IFC PS7, although a notable exception is that it explicitly acknowledges the need for free, prior and informed consent, rather than just free, prior



<sup>11</sup> [www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES)

<sup>12</sup> [www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated\\_GN7-2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated_GN7-2012.pdf?MOD=AJPERES)

<sup>13</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20553664~menuPK:4564187~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

<sup>14</sup> [www.ebrd.com/downloads/research/policies/2008policy.pdf](http://www.ebrd.com/downloads/research/policies/2008policy.pdf)



and informed consultation (Paragraph 4). The significance of this distinction is addressed in Box 4 on page 19.

- **The Asian Development Bank Safeguard Policy Statement (SPS) (2009):**<sup>15</sup> The SPS aims to avoid, minimize or mitigate harmful environmental impacts and social costs, and to help borrowers/clients strengthen their safeguard systems. The SPS builds upon ADB's previous safeguard policies on the environment, involuntary resettlement and Indigenous Peoples, and brings them into one single policy. The SPS applies to all ADB-financed projects.
- **The Inter-American Development Bank Operational Policy on Indigenous Peoples (2006):**<sup>16</sup> The policy applies to all Bank-supported operations and activities, and contains two sets of directives. The first requires the Bank to take a proactive approach in promoting the systematic inclusion of indigenous issues in Bank policies and projects. The second creates safeguards designed to prevent or minimize adverse impacts that Bank operations might have on Indigenous Peoples.
- **The Equator Principles (2006):**<sup>17</sup> These principles are a financial industry benchmark for determining, assessing and managing social and environmental risk in project financing. They were endorsed by more than 20 commercial banks (known as the Equator Banks) who provide more than 75% of all development project financing around the world. The principles refer back to the IFC's Performance Standards for all Category A projects, which includes oil and gas projects.

## National legislation

The legal recognition of indigenous rights at the international level has been augmented by evolving national legislation in many countries. Many countries with significant indigenous populations have legally recognized indigenous rights in some shape or form. For example, in the past two decades, most Latin American countries have undergone some form of constitutional reform and enshrined indigenous rights in national constitutions. In Australia and Canada, courts have recognized the rights of different indigenous groups to their territories based on the notion of 'aboriginal title' (i.e. that Indigenous Peoples were there first, and have rights that remain in existence and are legally protected). The legal implication is therefore one where governments are not being asked to grant Indigenous Peoples their rights, but rather to recognize and enforce these rights.

However, the recognized rights of Indigenous Peoples are varied and evolving both within and across different national contexts. There are significant national differences in the extent to which the rights of Indigenous Peoples are formally recognized and afforded legal protection, and in governments' treatment of customary land ownership and the procedural requirements that govern access to indigenous lands.

For example, the rights of Indigenous Peoples to the land they occupy and use may vary considerably between different countries, as well as within the same country. In some cases, within the context of an oil and gas project, though the state might own the sub-surface rights, indigenous groups may have a significant degree of control over access to the land (though the degree of control will vary). In other more rare cases, indigenous groups have gained both surface land rights and sub-surface mineral

<sup>15</sup> [www.adb.org/Documents/Policies/Safeguards/Safeguard-Policy-Statement-June2009.pdf#page=60](http://www.adb.org/Documents/Policies/Safeguards/Safeguard-Policy-Statement-June2009.pdf#page=60)

<sup>16</sup> <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=691261>

<sup>17</sup> [www.equator-principles.com/index.php/the-eps-and-official-translations](http://www.equator-principles.com/index.php/the-eps-and-official-translations)

rights, thus giving them control over whether an oil and gas project takes place at all and on what terms. In more common cases, indigenous groups do not legally hold surface or sub-surface rights, but they may exercise some rights such as notification and consultation rights, or they may be pursuing land claims in the courts. Finally, in some national contexts there is no customary or formal legal recognition of Indigenous Peoples' rights to land. Furthermore, countries with ostensibly similar legal regimes can differ considerably in the extent of enforcement and compliance. However, a useful first step indicator of national level acceptance of indigenous rights is to check whether the country in which they are operating has signed up to ILO 169 or the UN Declaration.<sup>18</sup>

Notwithstanding these differences, there is a trend in countries with significant indigenous populations to incorporate indigenous rights in national legislation. This may have a significant impact on

how oil and gas companies access and operate in indigenous lands and territories. In many contexts there is some disjuncture between the legal framework governing Indigenous Peoples' land rights and that governing oil and gas companies' access to land, and exploration and production rights; however, in some countries, the incorporation of indigenous land rights in national legislation has led to changes in the policy and legislative procedures governing oil and gas companies' access to indigenous areas. For example, the Bolivian government has recently developed a regulation which deals specifically with consultation, participation and compensation requirements for oil and gas operations in indigenous territories.<sup>19</sup>

### Company policies and approaches

Oil and gas companies follow a range of approaches to managing relations with Indigenous Peoples. Some do this through implementation of



<sup>18</sup> See footnotes 7 and 9 for further details on current signatories to ILO 169 and the UN Declaration.

<sup>19</sup> *Reglamento de consulta y participación para actividades hidrocarburíferas*—Decree N° 29033 of the 16 of February 2007 amended by Decrees N° 29124 of 9 May 2007 and N° 29574 of 21 May 2008.

#### Box 1: Some online links to national legislation concerning Indigenous Peoples

- Australia, Parliamentary Library online resources for Indigenous Peoples and the law: [www.aph.gov.au/library/intguide/law/indiglaw.htm](http://www.aph.gov.au/library/intguide/law/indiglaw.htm).
- The Government of Canada online resource to Aboriginal claims and treaties: [www.aboriginalcanada.gc.ca/acp/site.nsf/eng/ao20009.html](http://www.aboriginalcanada.gc.ca/acp/site.nsf/eng/ao20009.html).
- The Alaska Native Claims Settlement Act (ANCSA) Resource Center: [www.lbblawyers.com/ancsa.htm](http://www.lbblawyers.com/ancsa.htm).
- Venezuelan Organic Law on Indigenous Peoples and Communities (Ley Orgánica de Pueblos y Comunidades Indígenas): [www.mes.gov.ve/documentos/marcolegal/lopqi.pdf](http://www.mes.gov.ve/documentos/marcolegal/lopqi.pdf).
- Yacimientos Petrolíferos Fiscales Bolivianos (YPFB), Laws and Decrees webpage (including the Consultation and Participation Regulation for Hydrocarbon activities, Decree N° 29033): [www.ypfb.gov.bo/leyes\\_ds.php](http://www.ypfb.gov.bo/leyes_ds.php).
- Inter-American Development Bank Latin America and the Caribbean databank on Indigenous Legislation: [www.iadb.org/Research/legislacionindigena/leyn/index.cfm](http://www.iadb.org/Research/legislacionindigena/leyn/index.cfm).

broader human rights and community relations policies, some have chosen explicitly to follow IFC PS7, and others have adopted their own specific policies and standards.

In addition to corporate policies, there are also reporting guidelines for companies that cover Indigenous Peoples issues. For example, many oil and gas companies adhere to the [Global Reporting Initiative](#)<sup>20</sup> (GRI), which has reporting requirements<sup>21</sup> for companies operating in areas of Indigenous Peoples, and IPIECA, the Oil and Gas Producers Association (OGP) and the American Petroleum Institute (API) have developed joint guidance entitled [Oil and Gas Industry Guidance on Voluntary Sustainability Reporting](#)<sup>22</sup> (second

edition), which also covers company interactions with Indigenous Peoples.

### Links with the broader extractives sector

Experiences and initiatives of the mining industry's interactions with Indigenous Peoples can also be relevant to the oil and gas industry. In May 2008 the ICMM approved a [Position Statement on Mining and Indigenous Peoples](#)<sup>23</sup> after extensive stakeholder consultation and preparatory work over several years. The Statement stressed the need for constructive relationships between the mining and metals industry and Indigenous Peoples based on respect, meaningful engagement and mutual benefit,

<sup>20</sup> [www.globalreporting.org/NR/rdonlyres/8EB7E930-F586-49CF-92B9-34833FA3C5C1/0/G3\\_IP\\_HumanRights.pdf](http://www.globalreporting.org/NR/rdonlyres/8EB7E930-F586-49CF-92B9-34833FA3C5C1/0/G3_IP_HumanRights.pdf)

<sup>21</sup> GRI oil and gas sector supplement has been developed: <https://www.globalreporting.org/resource/library/OGSS-G3.1-Complete.pdf>, <https://www.globalreporting.org/reporting/sector-guidance/oil-and-gas/Pages/default.aspx>

<sup>22</sup> [www.ipieca.org/library](http://www.ipieca.org/library)

<sup>23</sup> [www.icmm.com/page/208/indigenous-peoples](http://www.icmm.com/page/208/indigenous-peoples)

#### Box 2: Examples of company policies and approaches on Indigenous Peoples

- **REPSOL**—see Indigenous Community Relations at: [www.repsol.com/es\\_en/corporacion/responsabilidad-corporativa/comunidades\\_locales/comunidades\\_indigenas/default.aspx](http://www.repsol.com/es_en/corporacion/responsabilidad-corporativa/comunidades_locales/comunidades_indigenas/default.aspx)
- **ConocoPhillips**—see Indigenous Communities at: [www.conocophillips.com/EN/susdev/communities/indigenous/Pages/index.aspx](http://www.conocophillips.com/EN/susdev/communities/indigenous/Pages/index.aspx)
- **BG**—see Indigenous Communities and Vulnerable People at: [www.bg-group.com/sustainability/society/Pages/society\\_our\\_strategy.aspx](http://www.bg-group.com/sustainability/society/Pages/society_our_strategy.aspx)
- **Total**—see Guidelines and Principles regarding Indigenous and Tribal Peoples at: [www.total.com/MEDIAS/MEDIAS\\_INFOS/3537/EN/Charte\\_peuples\\_autochtones\\_en.pdf?PHPSESSID=b2c173f006beb34df685c20c8966f83a](http://www.total.com/MEDIAS/MEDIAS_INFOS/3537/EN/Charte_peuples_autochtones_en.pdf?PHPSESSID=b2c173f006beb34df685c20c8966f83a)
- **ExxonMobil**: [www.exxonmobil.com/Corporate/community\\_rights\\_mgmt.aspx](http://www.exxonmobil.com/Corporate/community_rights_mgmt.aspx)
- **Woodside**: [www.woodside.com.au/NR/rdonlyres/20F327FB-D3FB-429B-A2DE-00B15D11A319/0/indigenouscommunitiespolicyjune2008.pdf](http://www.woodside.com.au/NR/rdonlyres/20F327FB-D3FB-429B-A2DE-00B15D11A319/0/indigenouscommunitiespolicyjune2008.pdf)
- **Talisman**: <http://www.talisman-energy.com/upload/editor/File/10417493%20-%20GLOBAL%20COMMUNITY%20RELATIONS%20POLICY%20-%20DECEMBER%209%202010%20-%201%20-%20TLMPRD.pdf>



with particular regard for the specific and historical situation of Indigenous Peoples.

In 2010, ICMM launched *The Good Practice Guide (GPG): Indigenous Peoples and Mining*,<sup>24</sup> to support ICMM members in implementing the underlying vision and the specific commitments set out in the Position Statement. The GPG is a comprehensive guide, designed to help mining and metals companies navigate the cultural, social, economic and political complexities of developing, operating and closing projects that are on, or near, indigenous lands, or that may otherwise have an impact on indigenous communities. It highlights good practice principles, discusses the challenges in applying these principles at the operational level, and provides examples of how mining projects have addressed these challenges.

While this review makes reference to mining industry examples and the work of the ICMM, there remain some important features that distinguish the interaction that oil and gas projects, as opposed to mining projects, can have with Indigenous Peoples.

For example:

- Financial flows: financial flows from royalties, taxes, etc. can be orders of magnitude greater than mining sector projects.
- Physical footprint: physical footprints from oil and gas extraction are typically less than for solid mineral extraction, although processing plants and other infrastructure may require significant land take. Extensive pipeline networks mean that oil and gas sector projects often have to deal more with linear developments.
- Employment generation: oil and gas sector projects generally require fewer and higher skilled jobs than in the mining sector.

<sup>24</sup> [www.icmm.com/library/indigenouspeoplesguide](http://www.icmm.com/library/indigenouspeoplesguide)



## Policy on relationships with indigenous communities

Repsol operates in areas occupied by indigenous communities in Argentina, Bolivia, Colombia, Ecuador and Peru. In all, around 80,000 individuals from different ethnic groups live in these areas.

In order to establish effective guidelines for action regarding the company's relationships with indigenous communities that are affected, either directly or indirectly, by Repsol's projects and activities, a Policy on Relationships with Indigenous Communities was drawn up during 2007–08, and was passed in December 2008. This process was characterized by the involvement of all of the company's business units and corporate areas responsible for future implementation, together with the involvement of an external group of experts, including collaboration from Intermón Oxfam. The process followed is set out below:

1. **Awareness of the situation:** information was analysed and compiled from various sources including:
  - an internal workshop on relationships with the community (April 2007);
  - the establishment of contacts with non-governmental organizations (NGOs) and sector-related organizations;
  - meetings with companies in the sector, with prior experience; and
  - an analysis of relevant documentation and prior experiences.
2. **Creation of a work group:** a work group was established by the Corporate Responsibility Committee, to produce an initial draft of the Policy (November 2007).







3. **Initial consultations:** consultations took place with the group of external experts made up of NGOs, including Intermón Oxfam (February 2008).
4. **Preparation of the internal draft:** comments made by the group of external experts were addressed by the company and the internal draft produced (March 2008).
5. **Consultations on the internal draft:** consultations took place with the company's business units responsible for future implementation, and the corporate areas involved. The external group of experts was consulted once again to evaluate the implementation of their contributions.
6. **Preparation of the definitive document for approval:** a final draft was prepared for approval by the Executive Committee (May 2008).
7. **Approval:** the Policy on Relationships with Indigenous Communities was approved (December 2008).

On 9 June 2010, the company approved the new standard for action with respect to the company's relationships with indigenous communities. The new standard aims to establish the principles for action set out in the Policy on Relationships with Indigenous Communities. This commits the company to: identifying the socio-economic background of the particular indigenous communities which live in areas where new projects are scheduled to take place; establishing communication channels with them in order to discover their expectations and aspirations; preventing, minimizing or restoring the impact on their environmental services; and, where appropriate, creating a plan for relationships with these communities which is in line with the development model chosen for each indigenous group.

## Key Issues: engagement, impacts and opportunities



This section sets out a range of considerations for oil and gas companies that are specific to operating in areas of Indigenous Peoples. It is structured around the three broad theme areas of engagement, management of key issues, and opportunities for Indigenous Peoples to benefit.

### Engagement: consultation, participation and grievance management

The importance of effective engagement through open, transparent and meaningful consultation processes, adequate information disclosure and listening to Indigenous Peoples in order to achieve inclusive and informed decisions and agreements is one of the key issues commonly emphasized in companies' interaction with Indigenous Peoples. Emerging good practice emphasizes the importance of establishing a relationship that endures throughout the life of the project.

Effective engagement with Indigenous Peoples is emphasized for the following reasons:

- It is an important indication that a company is respecting Indigenous Peoples' rights.
- In many cases, due to their particular history and current situations, Indigenous Peoples may distrust governments and developers. Effective, meaningful and respectful engagement is an important step in beginning to overcome that historical legacy.

In many ways, good practice engagement with Indigenous Peoples is not that different to good practice engagement with affected communities

more generally. In this regard, when carrying out consultation with Indigenous Peoples, oil and gas companies can refer to general good practice guides on how to carry out stakeholder engagement, such as the *IFC Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*.<sup>25</sup>

However, companies should note certain special considerations for engaging with Indigenous Peoples. First of all, key international policy and legal documents include specific sections on consultation with Indigenous Peoples and their right to be involved in decisions that affect them. One of the key underpinning principles of the UN Declaration is Indigenous Peoples' right to be involved in all decisions that affect them. Other examples are Articles 6 and 15 of ILO 169, and Statements 9 and 10 of IFC PS7. Furthermore, in many countries there are special legal, statutory and/or regulatory obligations for consulting Indigenous Peoples if they are to be impacted by a project (for example in Bolivia and Australia). Companies need a clear understanding of the requirements wherever they operate.

Considerations for effective engagement with Indigenous Peoples, drawn from a review of international policy and regulation as well as company good practice, can be summarized as follows:<sup>26</sup>

- **Socio-economic context:**
  - Identify Indigenous Peoples that may be affected and any relevant national laws that concern them.

<sup>25</sup> [www.ifc.org/ifcext/sustainability.nsf/Content/Publications\\_Handbook\\_StakeholderEngagement](http://www.ifc.org/ifcext/sustainability.nsf/Content/Publications_Handbook_StakeholderEngagement)

<sup>26</sup> For further good practice reference on engagement with Indigenous Peoples, see: the ICMM *Good Practice Guide: Indigenous Peoples and Mining*, Chapter 2: Engagement and Indigenous Participation; the Business for Social Responsibility and First Peoples Worldwide (2004), *Resource/Extractive Companies and Indigenous Peoples Engagement: Recipe for Dialogue Project Guidebook*, Chapters 4 & 5: <http://commdev.org/content/document/detail/1923>; and the IFC *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*, p47 to 55.

- Identify indigenous customary land use and claims.
- Gain an understanding of the specific historical context of Indigenous Peoples within the project area.
- Carry out socio-economic baseline and impact assessments with the participation of Indigenous Peoples, and share the findings of the assessments with them.
- **Culturally appropriate engagement:**
  - Allow sufficient time.
  - Consult in a language readily understood by affected Indigenous Peoples.
  - Provide information in culturally appropriate forms.
  - Carry out consultation and information disclosure in locations easily accessible for Indigenous Peoples.
  - Review engagement mechanisms, including grievance mechanisms, to make sure they are culturally appropriate and accessible.
- **Inclusion, working with indigenous representative institutions and consideration of customary decision-making processes:**
  - Identify, and engage with, existing indigenous representative institutions (for example chiefs, councils of elders, village councils, women's groups or associations, youth groups or associations).
  - Be inclusive of different groups (women and men, young and old) in a culturally appropriate, as well as open and transparent manner, taking care to identify and engage with potentially vulnerable groups within indigenous communities, who might be disproportionately impacted.
  - When engaging with formal representative institutions, realize that these might not always represent all interests in the community. In particular, companies may need to be sensitive to those sections of the community who may be excluded from the decision-making process, such as women and youth. It may be necessary

to obtain input from these groups by alternative means (for example, via household surveys and baseline studies, or through informal discussions with small groups). However, traditional decision-makers may not be supportive of this approach and companies need to take this into consideration when making decisions to seek input in secondary ways.

- Develop reasonable timeframes with indigenous groups for consultation and decision-making processes.
- **Good faith negotiation and decision-making with the objective of achieving agreements, seeking consent or broad community support:**
  - **Information disclosure:** provision of access to project related information (including information on all potential project impacts), acknowledging that a range of views on the project are likely to exist.
  - **Transparency:** potential involvement of external advisors, observers or assessors to ensure transparency of the process.
  - **Timing:** consultation takes place as early as possible, before key project decisions are made and impacts occur.
  - **Capacity building:** communication and capacity building programmes to enhance the effectiveness of consultation.
  - **Respectful dialogue:** seek to establish a dialogue in which the participating sides listen to each other, allowing for appropriate solutions to be agreed in an atmosphere of mutual respect and full participation.
  - **Seeking consent (see Box 4) or broad community support:** gaining broad community support or approval for a project and/or project decision from indigenous stakeholders effectively means that parties have strived to achieve a consensus from all those who will be affected by the project.
  - **Seeking negotiated agreements:** emerging good practice amongst companies operating significant projects on indigenous lands is to come to negotiated agreements (either



formalized or not) with affected indigenous groups. To achieve this, negotiation should take place in a spirit of 'good faith' (see Box 3). In some cases, agreements may be mandated by certain pieces of legislation or by policy makers at the regional levels. For example, in Canada, many modern indigenous land claim agreements expressly identify the need for agreements (for example the Nunavut Land Claims Act). In Australia, the Native Title Act provides for Indigenous Land Use Agreements (ILUAs) to be made between native title holders or claimants and other interested parties about how land and waters in the area covered by the agreement will be used and managed in the future.<sup>27</sup>

- **Culturally appropriate grievance mechanisms:**

Even with successful engagement and consultation processes, disputes over the impacts of company activities can occur at any time during the life of a project. The SRSG for Business and Human Rights discusses the importance of companies setting up effective grievance mechanisms in order to help identify, mitigate and possibly resolve grievances before they escalate.<sup>28</sup> In many ways, setting up effective company grievance mechanisms for Indigenous Peoples is not that different to setting one up with affected communities more generally. In this regard, oil and gas companies can refer to a general good practice guide such

### Box 3: IFC definition of 'Negotiation in good faith'

*'Negotiations with stakeholders should be entered into in "good faith," that is, conducted with an open mind, a willingness to engage in the process, and a genuine desire to build solutions and to reach agreement. Good faith negotiations are transparent, considerate of the available time of the negotiating parties, and deploy negotiation procedures and language readily understood and agreed to by all parties.'*

Source: IFC Stakeholder engagement: A good practice handbook for companies doing business in emerging markets (pp. 64–65).

as the IFC Good Practice Note on Addressing Grievances from Project-Affected Communities.<sup>29</sup>

It should be noted that effective grievance mechanisms that allow concerns and grievances to be recognized and resolved in an open and transparent manner, are best developed in participation with affected Indigenous Peoples, and in a culturally appropriate manner.

- **Establishment of long-term mutually beneficial relationships throughout the life of the project:**

Application of the above elements on a continuous basis throughout the life of a project can help a company establish an ongoing respectful relationship with affected Indigenous Peoples.

<sup>27</sup> For further information on company and Indigenous Peoples agreements see the ICMM Good Practice Guide: Indigenous Peoples and Mining, Chapter 4: Agreements; the Australian Government, Department of Industry, Tourism and Resources (2007), *Working with Indigenous Communities*, Chapters 6 and 7: [www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf](http://www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf); and the IBA Community Toolkit: [www.ibacommunitytoolkit.ca](http://www.ibacommunitytoolkit.ca).

<sup>28</sup> See *Business and human rights: Towards operationalizing the 'protect, respect and remedy' framework*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, p24–26: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>.

<sup>29</sup> For further information on grievance mechanisms see: the IFC Good Practice Note on Addressing Grievances from Project-Affected Communities ([www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p\\_GrievanceMechanisms/\\$FILE/IFC+Grievance+Mechanisms.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_GrievanceMechanisms/$FILE/IFC+Grievance+Mechanisms.pdf)); the ICMM October 2009 pilot testing version of a guide on *Handling and Resolving Local Level Concerns and Grievances* ([www.icmm.com/page/14809/human-rights-in-the-mining-and-metals-industry-overview-management-approach-and-issues](http://www.icmm.com/page/14809/human-rights-in-the-mining-and-metals-industry-overview-management-approach-and-issues)); the ICMM Good Practice Guide: Indigenous Peoples and Mining, Chapter 6: Dealing with Grievances; and the guidance tool on *Rights Compatible Grievance Mechanisms*, produced by the Corporate Social Responsibility Initiative of the Harvard Kennedy School in January 2008 ([www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper\\_41\\_Rights-Compatible%20Grievance%20Mechanisms\\_May2008FNL.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms_May2008FNL.pdf)).

#### Box 4: Free prior informed consent (FPIC) and free prior informed consultation

The issue of the extent to which Indigenous Peoples have the right to free, prior and informed consent (FPIC) with regard to projects in their territories is widely debated both internationally and within national contexts.

FPIC refers to a process whereby affected Indigenous Peoples have the free choice, based on sufficient and timely information concerning the benefits and disadvantages of the project, of whether and how these activities occur, according to their systems of customary decision-making.

Specifically, FPIC means:

- **Free**—people are able to freely make decisions without coercion, intimidation, punishment or manipulation.
- **Prior**—sufficient time is allocated for people to be involved in the decision-making process before key project decisions are made and impacts occur.
- **Informed**—people are fully informed about the project and its potential impacts and benefits, and the various perspectives regarding the project (both positive and negative).
- **Consent**—there are effective processes for affected Indigenous Peoples to approve or withhold their consent, consistent with their customary decision-making processes, and that their decisions are respected and upheld.

FPIC is therefore more than just a process of consultation. It is about a negotiated process involving all interested parties, the aim of which is to allow Indigenous Peoples to either give or withhold their consent.

Although there is a certain amount of consensus between governments, NGOs and companies on the need for **free, prior and informed** consultation with Indigenous Peoples in negotiation and decision-making processes, the concept of consent is not universally accepted.

Many governments question the right to consent for Indigenous Peoples over oil and gas developments of national significance in their territories, while many companies have concerns over the practicalities of applying and enforcing FPIC. Company concerns include ambiguities around 'consent' such as:

- Would consent require full community support, or just a majority?
- Would consent be granted through representative institutions or individual choice mechanisms, such as a referendum?
- How is 'consent' defined throughout the life of a project—could 'consent' which is given at the outset of an investment be withdrawn at a later stage?

These questions have precluded the acceptance of FPIC by many policy makers and companies, who instead choose to apply the approach of ensuring free, prior and informed consultation leading to broad community support.

Conversely, advocates of FPIC see it as the exercise of Indigenous Peoples' rights to their lands and ancestral territories, as well as their rights to self-government. FPIC is used in different contexts; in some cases it is used in terms of being a right to approve or veto activities, and in others in terms of being a principle which decision-making processes should aim to achieve. FPIC has been mandated or recommended in a number of international and national legal and policy documents<sup>30</sup> and promoted by NGOs advocating for indigenous rights.

Regardless of the debate, companies benefit from ongoing engagement with Indigenous Peoples in the places where they operate, and from their broad support and participation. The application of the good practice approaches summarized in this section can assist companies and indigenous communities in reaching this position.

For further reading see the *Appendices*.

#### IFC PS 7 states that the circumstances requiring FPIC are:

- Impacts on lands and natural resources subject to traditional ownership or under customary use.
- Relocation of Indigenous Peoples from lands and natural resources subject to traditional ownership or under customary use.
- Where significant project impacts on critical cultural heritage that is essential to the identity and/or cultural, ceremonial or spiritual aspects of Indigenous People's lives are unavoidable.
- Where a project proposes to use the cultural heritage including knowledge, innovations or practices of Indigenous Peoples for commercial purposes.

See IFC PS7 for details: [www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES)

<sup>30</sup> These include: the UN Declaration on the Rights of Indigenous Peoples (2007): Articles 10, 11, 19, 28, 29 & 32; ILO 169: Article 16; IFC: Performance Standard 7 (2012); the EBRD Environmental and Social Policy (2008): Performance Requirement 7 on Indigenous Peoples; the Philippines' Indigenous Peoples' Rights Act (1997); and the Australian Aboriginal Land Rights (Northern Territory) Act 1976.



## Talisman report on free, prior and informed consent

During 2008 and 2009, Talisman Energy engaged in dialogue with socially responsible investors Bâtirente and Regroupement pour la Responsabilité Sociale des Entreprises (RRSE) related to indigenous rights and the concept of free, prior and informed consent (FPIC). In response to this dialogue, Talisman commissioned the Corporate Social Responsibility practice group, Foley Hoag LLP (a Washington-based law firm) to prepare a report (the Report) on the benefits and challenges related to the adoption and implementation of a corporate policy on FPIC. Talisman, Bâtirente and RRSE also invited the World Resources Institute (WRI), an environmental think tank with FPIC expertise, to provide a third-party commentary on the Report.

The Report, entitled *Implementing a Corporate Free, Prior, And Informed Consent Policy: Benefits and Challenges*, reflects discussions which have taken place within the international community interested in this issue. It includes the opinions of a body of experts on indigenous rights from governments, companies and civil society organizations. The Report focuses not only on the advantages that may be associated with the adoption of an FPIC policy, but also the significant challenges of implementing an FPIC approach, particularly where governments are not supportive, or where promoting a consent process may conflict with sovereign constitutional frameworks, regulations and remedies for addressing indigenous issues, land rights and development.

Talisman has agreed to respond to the recommendations and accordingly the company will use the Report to assess our global community relations policies and procedures and to inform our engagement approach to future projects. Further, Talisman aims to put in place enhanced measures to address community engagement issues, and which mandate practices that lead to a clear expression of support from indigenous communities residing in areas where Talisman proposes to work. In considering such measures, the objective remains one of striking a balance between the company's business needs, a responsible approach to its projects and the expectations of communities, the Shareholder Group and other external stakeholders.





## Case study 3: Total E&amp;P Bolivie

## Total building trust with the Guaraní Indigenous People in Bolivia

### Petroleum industry in Bolivia

On 1 May 2006, the Government of Bolivia, under President Evo Morales, nationalized oil and gas reserves and the exploitation of hydrocarbons through Supreme Decree 28701. This move had been preceded by the introduction in May 2005 of the Hydrocarbons Law (Law 3058), ratified in February 2007, which sets out a detailed process for 'Consultation and Participation' of Indigenous Peoples concerning oil and gas developments in Bolivia. Under the Law, the process is conducted by the Ministry of Hydrocarbons, with the involvement of the company limited to preliminary consultation, provision of information, financing of the process and revision of the resulting 'Validation Agreement' reached by the Government, indigenous groups and other landowners.

### Total in Bolivia: the Ipati Block

In November 2007, Total E&P Bolivie commenced 3-D seismic exploration in the Ipati Block. The Block, which is located within the Chaco region of southern Bolivia, is inhabited by the Guaraní Indigenous People, as well as other farmers. The main economic activity of both groups is agriculture and livestock, however there has been a history of conflict over land rights between them.

The Guaraní people are a nation of culturally related Indigenous Peoples of South America. The traditional range of the Guaraní people includes Paraguay, southern Bolivia, northern Argentina, southern Brazil and the west of Uruguay. The Guaraní are the third largest indigenous group in Bolivia. They work to assure their daily sustenance under principles of self-sufficiency and reciprocity, promoting an integral harmony with nature. Their main economic activities are hunting, fishing, and cultivating maize, peanuts, beans and pumpkins.

Total E&P Bolivie's 3-D seismic programme was subject to the first formal 'Consultation and Participation' process under the 2005 Hydrocarbons Law. The success of the project was due to strong relationships with local people, including the leaders of the Guaraní representative organizations, the Mayors of Lagunillas and Muyupampa and other landowner representatives. Total E&P Bolivie's community relations team, which includes national and international social development experts, was able to explain the company's activities and potential



*Total E&P Bolivie's  
community  
relations team*

## ... Total building trust with the Guaraní Indigenous People in Bolivia (continued)

impacts to the population, while ensuring that the project would be developed based on a robust understanding of the cultural, social, spiritual and environmental context. As a result, local people were aware of the potential impacts of the activities prior to the formal Consultation and Participation process.

### Outcome of the Consultation and Participation process

As a result of the process, Total E&P Bolivia agreed to provide compensation for impacts identified. In addition, the company worked with Guaraní representative organizations to develop agricultural projects to benefit the people. Leaders of the Iupaguasu organization arranged partnerships with some national and international NGOs to install in its territory a storage centre and a maize seed-sorter machine, for example, while other groups (including non-indigenous) quickly became involved in the project.

Further benefits for the Guaraní and other local people resulted from their participation in implementing the project. For example, a further seven community relations staff were hired locally, including four Guaraní. In addition, building on the model of a previous project in 2003, three Guaraní people designated by the Guaraní People's Assembly, an organization that represents the Guaraní people in Bolivia, were employed as environmental monitors. Following a period of training and familiarization with the company, the monitors were involved in ensuring compliance of the Environmental Impact Assessment. Additionally, and in a complementary way, they were able to report back to their people, in their own language, the characteristics of the project, and provided support in the recruitment of personnel and the establishment of training workshops.

*Guaraní  
employees  
working as  
environmental  
monitors*



### Lessons learned

- The importance of respecting each other's culture and exchanging knowledge: through ongoing consultation, Total E&P Bolivie learned about the Guaraní's ñandereko (way of living), as well as the local geography. In turn, through local employment opportunities, the Guaraní were able to develop their understanding of the company's culture, as well as technical aspects of oil and gas exploration.
- The involvement of indigenous technicians as environmental monitors of our activities eliminated prejudices about the company. By training local Guaranís to play a role in ensuring strict compliance with the environmental parameters described in the Environmental Impact Assessment Study and environmental regulations, further mutual learning was achieved.
- Responding quickly to new legislation, and demonstrating a commitment to go beyond compliance, was very well received by the Guaraní and created bonds of respect and reciprocity.
- The need to involve the indigenous population from the outset is critical to business success. Relationships of trust come about through ongoing exchange of knowledge and experiences between companies and the indigenous population before, during and after any activity which takes place within their territory.
- Local employment of Indigenous Peoples should be considered a long-term process to ensure mutual benefits, requiring investment in training.

*'It is fundamental for the operating company to create a climate of trust in the community, to prevent any operations from grinding to a halt. If there is no such trust, it is highly likely that the operations negotiated and agreed will not be sustainable. Trust is not something which is gained in a lengthy conversation, but something that is nurtured and consolidated by reliable and consistent behaviours over time ...'*

Claudio Cardama, Quality Control Manager, Total E&P Bolivie



## Management of impacts and issues

This section provides an overview of various key issues that oil and gas companies may face when seeking to operate in Indigenous Peoples' lands and territories. The selection of issues presented is not intended as a comprehensive list of all issues specific to Indigenous Peoples, rather it focuses on those that companies have commonly encountered, or for which clear guidelines or policy requirements exist. However, there are other existing and emerging issues that may be encountered by companies operating in areas of Indigenous Peoples, for example, issues relating to previously uncontacted people, water tenure in the case of riverine and coastal communities, and company interaction with indigenous communities affected by other challenges, such as those resulting from climate change. See the list of useful resources on page 47 for further information relating to these and other issues.

It should also be noted that the issues set out here are described as they relate specifically to Indigenous Peoples. Many of the issues also apply in general to other, non-indigenous communities living in areas affected by oil and gas developments. Additionally, good practice principles and approaches to social and environmental performance (as developed by IPIECA and other organizations, for example) can apply equally to company relationships with Indigenous Peoples as they do to other communities.

### Land tenure and land access

Land is often of particular cultural, spiritual, historical and economic importance to Indigenous Peoples, and they will often claim rights to areas that they consider ancestral territories. These rights are collective, in that the territory belongs to all those Indigenous Peoples (often living in different communities) who inhabit and use it. Indigenous

Peoples' connection to their territories often carries an ancestral obligation to protect and preserve it for future generations.

In many parts of the world, Indigenous Peoples have experienced loss of land, physical and economic displacement, and a lack of recognition of their rights to land. The issue of land tenure is therefore a critical subject for indigenous groups. The struggle for possession, legal recognition, demarcation and protection of traditional lands and their resources has been a focus of various indigenous political movements.

ILO 169 (Part II: Land) and the UN Declaration (Articles 26 & 26) recognize Indigenous Peoples' traditional rights to their lands, territories and resources.<sup>31</sup> However, the extent to which land tenure for Indigenous Peoples is recognized in national law varies from country to country. In some national contexts indigenous land rights are fully recognized by national legislation, while in other cases Indigenous Peoples may hold no legal rights to the lands that they have traditionally occupied. However, over the past two decades, the general trend has been for increasing recognition of Indigenous Peoples' land rights (see *National legislation* on page 10). In practice this means that oil and gas companies may need to provide some form of accommodation of Indigenous Peoples' rights or financial payment to Indigenous Peoples to access their land (depending on the particular circumstances, financial payment might be seen as a form of compensation payment or a right-of-way payment). In many cases, access to land payments may be negotiated on a life-of-project basis, or might have to be re-negotiated over time.

The process of identifying and demarcating traditional territories also varies across different national contexts. In some national contexts, the identification, demarcation and denomination of

<sup>31</sup> See ILO 169 Part II: Land; and the UN Declaration Articles 25 and 26.



specific land areas as indigenous territories is clear even if those demarcated lands in question are not legally titled (for example in many Latin American countries). In other contexts, indigenous groups may lay claim to land areas that have not yet been properly demarcated or mapped, thus making it difficult to identify the boundaries of the territory in question. Furthermore, over the years, indigenous groups may have experienced the loss (partial or entire) of their traditional lands, which may have been titled to other groups or individuals. This can lead to disputes over overlapping land claims. In practice, this can lead to confusion over whether to direct payments (or another accommodation) to Indigenous or non-Indigenous People for access to the same piece of land, or it can mean that a company might have to accommodate both.

When aiming to access an indigenous territory, the following are key considerations for oil and gas companies, as well as broader extractives companies.<sup>32</sup> Understanding these issues is often an integral part of socio-economic baseline studies conducted in the early stages of a project.

- **Legal context:** This includes both national and international laws and regulations, as well as any contestations or land claims that are in process.
- **Traditional and cultural land governance:** This includes indigenous groups' historical, spiritual and cultural connection to the land, current uses of the land, as well as decision-making processes and governance structures around land. For example: is the land accessed (or avoided) for cultural purposes now, or was this the case in the past (for example religious ceremonies, festivals); and how are decisions made about land—at the community level, the territorial level, or both?

- **Economics and livelihoods:** Understand the difference between individual or community rights of use and the collective right. Is the land used by Indigenous Peoples to support traditional livelihoods (for example nomadic grazing, harvesting, fishing, hunting, utilization of forest resources)?

Furthermore, in the case of projects taking place on Indigenous Peoples' land that will engender impacts, the IFC Performance Standard 7 recommends the following approach:

- Document efforts to avoid and otherwise minimize the area of land proposed for the project.
- Document efforts to avoid and otherwise minimize impacts on natural resources and natural areas of importance to Indigenous People.
- Identify and review all property interests and traditional resource uses prior to purchasing or leasing land.
- Assess and document the Affected Communities of Indigenous People's resource use without prejudicing any Indigenous People's land claim. The assessment of land and natural resource use should be gender inclusive and specifically consider women's role in the management and use of these resources.
- Ensure that Affected Communities of Indigenous Peoples are informed of their land rights under national law, including any national law recognizing customary use rights.
- Offer Affected Communities of Indigenous Peoples compensation and due process in the case of commercial development of their land and natural resources, together with culturally appropriate sustainable development opportunities.
- Enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and the successful outcome of the negotiation.



<sup>32</sup> For further guidance on dealing with this issue see the ICMG *Good Practice Guide: Indigenous Peoples and Mining*, Chapter 3, Section 3.2; and the Business for Social Responsibility and First Peoples Worldwide *Resource/Extractive Companies and Indigenous Peoples Engagement: Recipe for Dialogue Project Guidebook* (2004), Chapter 3: Indigenous Peoples' Land Rights: <http://commdev.org/content/document/detail/1923>.



## Resettlement

Given the particular sensitivities of land rights issues to Indigenous Peoples, as discussed under *Land tenure and land access* (above), the resettlement of Indigenous Peoples as a result of project-related activity can be controversial.

According to the IFC, because the physical relocation of Indigenous Peoples is particularly complex and may have significant and irreversible adverse impacts on their cultural survival, companies should make every effort to explore feasible alternative project designs to avoid physical relocation of Indigenous Peoples from their traditional lands.

According to ILO Convention 169 and the UN Declaration, the resettlement of Indigenous Peoples should only be considered as an exceptional measure and should only take place with the Indigenous Peoples' free, prior and informed consent (Articles 16 and 10 respectively).

However, ILO 169 states that in those cases where resettlement is considered necessary as an exceptional measure and the affected Indigenous Peoples do not give their consent, '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'. Furthermore, whenever possible, resettled Indigenous Peoples 'shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist' (Article 16).

The IFC states that its clients should avoid the resettlement of Indigenous Peoples whenever possible, but that when this is 'unavoidable', the resettlement should be carried out in 'good faith negotiation' with affected Indigenous Peoples. IFC Performance Standard 7<sup>33</sup> recommends the following:

- The client will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held traditional or customary lands under use.
- If such relocation is unavoidable, the client will not proceed with the project unless it enters into a good faith negotiation with the affected communities of Indigenous Peoples, and documents their informed participation and the successful outcome of the negotiation.
- Any relocation of Indigenous Peoples will be consistent with the Resettlement Planning and Implementation requirements of Performance Standard 5.

<sup>33</sup> [www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES)

- Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the reason for their relocation cease to exist (see [IFC Performance Standard 5](#), 2006).<sup>34</sup>

The lack of a requirement to secure the consent of an indigenous community prior to proceeding with development-related resettlement in IFC Performance Standard 7 has been a contentious point for many indigenous organizations.

In cases where land access or acquisition has been negotiated previously by a third party, including government, conduct due diligence to identify whether legacy issues may exist that could impact the relationship with indigenous communities.

## In-migration

In-migration refers to the movement of people to an area seeking economic opportunities as a result of a current or potential development activity taking place, or planned to take place, in that area. Indigenous Peoples have often experienced encroachment on their lands by outsiders, exposing them to the threat of new diseases, cultural change, internal and external conflict, or the loss of their traditional lands and access to resources on which their livelihoods depend. In-migration into indigenous areas can, therefore, threaten an indigenous group's way of life or ability to maintain and develop their identities and cultures. Furthermore, large-scale in-migration may also have unintended impacts on local cultural heritage, including the desecration and destruction of sacred sites (for example graves, waterways, sacred forests, etc.).

These negative impacts may be further exaggerated in cases where Indigenous Peoples live in isolation and have had only limited contact with outsiders.<sup>35</sup>

In many ways, the effective management of in-migration into indigenous territories is no different to that associated with project-induced in-migration more generally. Good practice approaches, such as those set out in the 2009 IFC publication [Projects and People: A Handbook for Addressing Project-Induced In-Migration](#),<sup>36</sup> are therefore applicable to cases of in-migration to indigenous lands.

However, the potential and specific nature of in-migration impacts on indigenous areas may require comprehensive analysis and management plans, which should be carried out and developed in consultation with affected Indigenous Peoples.

The related term, 'influx', is often used to refer to temporary movements of people to, and heightened activities in, a project-affected area, which can also have negative impacts on indigenous groups. These impacts require similar assessment and management.

## Traditional knowledge and cultural heritage

Cultural heritage and traditional knowledge with regard to Indigenous Peoples refers to tangible or intangible assets of biological, spiritual, aesthetic, cultural and/or economic value. Tangible forms of indigenous cultural heritage can refer to sites or natural environmental features with archaeological, paleontological, historical, cultural, artistic and religious values such as sacred rocks or trees.

<sup>34</sup> [www1.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES)

<sup>35</sup> For further information on Indigenous Peoples living in isolation see: the UN article, *Indigenous peoples living in voluntary isolation*, [www.un.org/events/tenstories/06/story.asp?storyID=200](http://www.un.org/events/tenstories/06/story.asp?storyID=200); the UN report *State of the World's Indigenous Peoples* (page 233), [www.un.org/esa/socdev/unpfii/documents/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf); and UN General Assembly (Reference A/HRC/EMRIP/2009/6), Draft Guidelines on the Protection of Indigenous Peoples in Voluntary Isolation and in Initial Contact of the Amazon Basin and El Chaco, [www2.ohchr.org/english/issues/indigenous/ExpertMechanism/2nd/docs/A\\_HRC\\_EMRIIP\\_2009\\_6.pdf](http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/2nd/docs/A_HRC_EMRIIP_2009_6.pdf)

<sup>36</sup> [www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/rep\\_influx\\_full.pdf/\\$FILE/Influx\\_Full.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/rep_influx_full.pdf/$FILE/Influx_Full.pdf)



Traditional cultural resources, knowledge and practices can be referred to as intangible cultural heritage or traditional knowledge (for example language, oral traditions, performance arts, rituals, environmental and resource knowledge, etc.).

Indigenous Peoples often have, over the course of generations, developed their own sets of knowledge about their environments, health, technologies and techniques, rites and rituals and other cultural expressions. Furthermore, in many cases, indigenous groups may attribute special spiritual, cultural or historical value to specific sites or areas in their traditional territories. Indigenous Peoples' traditional knowledge, particularly with regard to their environment, has often been ignored or undervalued by authorities and in some cases, indigenous sacred objects, symbols or knowledge have been placed in the public domain and threatened, used or patented for commercial purposes.

In the past few decades there has been a trend in the international policy and regulatory context to develop measures to protect Indigenous Peoples' traditional knowledge and cultural heritage, both from outsiders using it without consent or equitable sharing of benefits, and to value and preserve it for future generations.

For example, the [IFC Performance Standard 8 on Cultural Heritage](#)<sup>37</sup> aims to protect cultural heritage from the adverse impacts of project activities and support its preservation, as well as promote the equitable sharing of benefits from the use of cultural heritage in business activities. It also makes specific reference to the intangible cultural heritage of Indigenous Peoples (IFC Performance Standard 7, Section 11).

#### [Article 8\(j\) of the Convention on Biological Diversity \(Traditional Knowledge, Innovations and Practices\)](#)<sup>38</sup>

commits governments to respect, preserve and maintain the traditional knowledge of indigenous communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. In addition to the conservation of biological diversity, the Convention also has the objectives of:

- the sustainable use of the components of biological diversity; and
- the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

Both of these objectives may have implications for companies operating in areas of Indigenous Peoples as, in some circumstances, their traditional relationship to the environment and biodiversity makes them key users in the sustainable use equation. In addition, Indigenous Peoples' rights to the ecosystems on which they depend may both increase the need for compensation for resources removed and add complexity to the issue of compensation in the event of land take and resettlement.

Parties to the Convention on Biological Diversity have also dedicated a work programme on Article 8(j) aimed at finding ways to protect indigenous traditional knowledge from the impacts of development projects that take place in indigenous lands. The main outcome of this work programme has been the development, in cooperation with indigenous and local communities, of the [Akwé: Kon Guidelines](#)<sup>39</sup> (*Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities*). These guidelines provide

<sup>37</sup> [www1.ifc.org/wps/wcm/connect/dd8d3d0049a791a6b855faa8c6a8312a/PS8\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/dd8d3d0049a791a6b855faa8c6a8312a/PS8_English_2012.pdf?MOD=AJPERES)

<sup>38</sup> [www.cbd.int/traditional](http://www.cbd.int/traditional)

<sup>39</sup> Pronounced 'agway-goo'. A holistic Mohawk term meaning 'everything in creation' provided by the Kahnawake community located near Montreal, where the guidelines were negotiated. [www.cbd.int/doc/publications/akwe-brochure-en.pdf](http://www.cbd.int/doc/publications/akwe-brochure-en.pdf)



general advice on the incorporation of cultural, environmental (including biodiversity-related) and social considerations of indigenous and local communities into impact assessment procedures.

Finally, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has a [specific programme](#)<sup>40</sup> whose aim is to protect Indigenous Peoples' tangible and intangible heritage.

Cultural heritage protection may also be subject to legal regulation at the national level. In several countries, physical and sacred sites, artefacts and remains, and certain landscapes are protected by law, and companies are required to avoid damaging such sites, obtain government authorizations, or to provide proper compensation where some damage is unavoidable. For example, Aboriginal people in Australia hold specific and identified legal, procedural and cultural rights with regard to their cultural heritage. However, few countries currently have laws in place to protect intangible cultural heritage.

Within this overall context, companies operating in indigenous lands should respect Indigenous Peoples' cultural heritage and traditional knowledge. One of the ways a company can deal with indigenous cultural heritage issues is to develop and implement cultural management processes in participation with Indigenous Peoples. Cultural heritage management and preservation encompasses the protection and enhancement of the tangible aspects of cultural heritage, as well as traditional practices around

governance, ceremonies, spiritual practices and traditional knowledge.

The following are examples of good practices that companies can consider with regard to the management of indigenous cultural heritage issues:<sup>41</sup>

- Assessing potential impacts on cultural heritage in consultation with Indigenous Peoples as part of the social and environmental assessments (refer to the Akwé: Kon guidelines).
- Developing effective cultural heritage management plans in consultation with Indigenous Peoples.
- Respecting Indigenous Peoples' use of traditional knowledge. For example, the use of indigenous names can be sensitive, and therefore it is recommended that companies consult with the relevant communities before using any form of indigenous knowledge, even for such purposes as naming project sites or pieces of equipment.
- Recognizing the value of indigenous traditional knowledge—indigenous groups have often developed environmental and natural resource knowledge of their territories, which can complement the company's technical expertise. For example, Indigenous Peoples may be a primary source of knowledge of the occurrence, behaviour and distribution of species in some areas.
- Supporting indigenous aspirations to preserve and enhance their cultural heritage and traditional knowledge: this can be done through targeted social investment projects or community development plans (such as funding the recording of languages and stories or sponsoring cultural centres or festivals).

<sup>40</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=35393&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=35393&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>41</sup> For further guidance on dealing with cultural heritage issues see the ICMM *Good Practice Guide: Indigenous Peoples and Mining*, Chapter 5, Section 5.4, 'Cultural Preservation'; and the Business for Social Responsibility and First Peoples Worldwide guidebook entitled *Resource/Extractive Companies and Indigenous Peoples Engagement: Recipe for Dialogue Project* (2004), Chapter 2, Section VI, 'Traditional Ecological Knowledge and Sustainability', <http://commdev.org/content/document/detail/1923>. For more information on the Australian context see the Australian Government, Department of Industry, Tourism and Resources' *Working with Indigenous Communities* (2007), Chapter 8, 'Cultural Heritage', [www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf](http://www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf).



### Natural resource use and environmental issues

The natural environment can be of central importance to many Indigenous Peoples, not only because they often depend wholly or partly on it for their livelihoods, but also because it has strong cultural, and often spiritual, significance. Traditional livelihoods, such as pastoralism, hunting and gathering, fishing, rotation agriculture in tropical forests, and reindeer herding and whaling in the Arctic, are highly dependent on specific ecosystems and usually hold specific cultural significance for indigenous groups. Adverse changes to the ecosystem may have a negative impact on livelihoods, or potentially contribute to poverty in indigenous communities, but may also have an impact on their cultural way of life and possibly even their cultural survival. Indigenous Peoples can therefore be particularly vulnerable to modifications in the environment brought on by the potential environmental impacts of oil and gas operations.

Emerging good practice considerations for companies when dealing with environmental and natural resource issues include:<sup>42</sup>

- Consulting widely with affected Indigenous Peoples to understand their environmental concerns about oil and gas operations and how these concerns can be addressed.
- Developing specific response measures, for example in relation to oil spill contingency plans, in consultation with Indigenous Peoples where particular vulnerabilities are identified.
- Partnering with Indigenous Peoples in identifying, mitigating and monitoring environmental impacts, for example, by including Indigenous Peoples in the environmental impact assessment teams and on environmental monitoring committees, and involving them in the collection and analysis of monitoring data.
- Ensuring, where relevant, that the traditional knowledge of Indigenous Peoples is incorporated into environmental impact assessments and management plans, through effective consultation.
- Finding opportunities to involve indigenous groups in environmental protection, rehabilitation and restoration. Examples include gathering seeds of native plants for use in rehabilitation, fire management and wildlife management.

<sup>42</sup> For further guidance on dealing with natural resource issues see the ICMM *Good Practice Guide: Indigenous Peoples and Mining*, Chapter 5, Section 5.5, 'Environmental Protection, Rehabilitation and Monitoring'; and the Australian Government, Department of Industry, Tourism and Resources' *Working with Indigenous Communities* (2007), Chapter 9, Environmental Co-Management, [www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf](http://www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf).

## Case study 4: BP

## Village response teams in Arctic Alaska

BP has been active in Alaska for more than fifty years. The company opened its first office in Anchorage in 1959, and the first team of geologists and engineers arrived during the following year. After the first discovery of oil in 1968, BP and the other companies with oil and gas leases began to develop the Prudhoe Bay field. The first oil flowed in 1977. Over the years, BP has worked closely with the government of the North Slope Borough and the local communities in the region.

Since 1979, BP has maintained a staffed office in Barrow, the seat of the North Slope Borough government. The company also has one senior staff member who has worked as the main point of contact between BP and the North Slope Borough government, scientists and subsistence communities for the past 20 years.

A number of emergency response teams are trained and ready to respond to emergencies on Alaska's North Slope. Beginning with Barrow, and now including individuals from five communities within the 90,000 square miles of the North Slope Borough's region, the Village Response Teams (VRTs) are trained and ready to assist the oil and gas industry, local governments or other communities in oil spill clean-up or other emergencies on the North Slope.

The local knowledge of the Inupiat whalers is extremely important to the industry. No one understands how to move small vessels around in broken ice better than these whalers, and most of the response team members are whaling captains or crew members.

The Barrow village response team was formed around 1998 during the permitting efforts for BP's Northstar development, which was the first offshore oil and gas field in the Arctic. Local residents, who value their marine resources and hunt the bowhead whale under a quota from the International Whaling Commission, were initially opposed to the Northstar development because of concerns about the potential for oil spills. Residents were not confident that the industry could respond to spills in Arctic waters.

Residents from several other villages have since become part of the village response teams, training and drilling with Alaska Clean Seas (ACS—the industry spill response cooperative) and working directly with the producers. Members receive 'hazwoper' training which involves techniques in hazing birds and other wildlife away from a spill. All members have knowledge of ocean survival, and are also trained to monitor impacts on subsistence resources. The members are part-time and are paid during training sessions, drills and if they should be required to respond to an actual emergency. Many of the members were also trained to captain specialized spill response vessels operated by ACS.

Although there is some turnover of staff within the village response teams, as they move on to other jobs within the oil and gas industry, local whaling captain Charles Hopson, who worked with BP to form the first group, considers that to be a success in itself, and believes that the village response teams are not only valuable for incorporating traditional knowledge into response efforts, but also as a 'jumping off' point for workforce development efforts.



## Participatory environmental and social monitoring in rural Andean communities



### The PERU LNG Project

The PERU LNG Project (the Project), operated by Hunt Oil, is located in the southern region of Peru and comprises a natural gas transportation pipeline that traverses the Andes to a liquefaction plant and marine terminal on the Pacific coast. The 408-km pipeline crosses diverse landscapes and ecosystems, reaching a maximum elevation of 4,900 m and passing through 22 districts in the departments of Ayacucho, Huancavelica, Ica and Lima, many of which are remotely located.

### Social profile

Within the pipeline area of influence are 34 rural Andean communities and 15 localities. Many communities in Ayacucho and Huancavelica depend heavily on subsistence agricultural practices for their livelihoods. According to the United Nations Development Programme (UNDP), they are considered among the poorest communities in Peru, with the region of Huancavelica having the lowest human poverty index (UNDP, 2006).

Given this social context, PERU LNG decided to augment the social baseline conducted as part of the Environmental and Social Impact Assessment (ESIA) by conducting in-depth socio-economic and cultural evaluations of the communities likely to be affected by the Project. This was done early enough in the Project planning phase to implement the necessary plans and procedures to minimize any potential impact, and included a robust stakeholder engagement process, a systematized grievance mechanism, and local hiring and purchasing procedures. A Rural Andean Community Management Strategy was developed to ensure that appropriate consideration was given to the most vulnerable populations along the pipeline. Further, a comprehensive participative community monitoring programme was established during pipeline construction.

### Participatory environmental and social monitoring

The Participatory Environmental and Social Monitoring Programme (PESMP) was implemented by a prestigious and experienced national non-profit organization. This ensured that the programme was appropriate for the social context.

The primary objective of the PESMP is to provide an opportunity for community members to actively participate in the monitoring of the overall environmental and social performance of the Project during construction. In doing so, perceptions about the impacts of pipeline construction are addressed.

While the PESMP was not developed specifically for indigenous people, participatory monitoring of this kind should arguably be conducted in all cases, and perhaps most importantly in communities with a strong connection to natural resources.

## Programme design

Specific objectives of the PESMP included:

- community participation in the project assurance processes;
- a guarantee that community concerns be effectively addressed;
- ensuring that communities receive accurate information regarding social and environmental performance;
- using feedback to improve the social and environmental performance of the Project; and
- providing information to local, regional, national and international stakeholders.

The development of the PESMP involved, on a voluntary basis, the active participation of stakeholders from the Project-affected communities, and also local authorities, civil society, governmental offices and international financial institutions.

Information about the programme design and objectives was provided to the communities through a series of informative meetings. Follow-up meetings were held to ensure each community had a clear understanding of the scope, and particularly the benefits and management arrangements. This allowed expectations about the programme to be validated.

## Selection of community monitors

Programme monitors, representing each community, were selected by the individual communities. This process followed criteria that were set to ensure that the monitors had the necessary background for the role. Women and young members of the communities were encouraged to seek nomination.

All communities in the area of influence were to be represented by one or more community monitors, the actual number being commensurate with the amount of community land used by

the project. The monitors were selected at communal assemblies that neither the company nor the implementing team could attend.

## Training

The training programme for community monitors included a review of programme objectives and the roles and responsibilities of the monitors. The monitors were further trained in construction processes, the potential and actual impacts of specific construction activities, the Project's social and environmental commitments, and the use of monitoring protocols and equipment.





## *... Participatory environmental and social monitoring in rural Andean communities (continued)*

Seventy-seven monitors passed the training and were chosen to commence monitoring. The implementing technical team is made available to assist the monitors and provide skills transfer throughout the duration of the programme.

### **Programme implementation**

Monitors spend 10 days a month in the field to inspect work activities and reinstatement works, accompanied by a member of the implementing organization. The monitors record all findings in coordination with the specialist to ensure their observations are objective, based on Project commitments or actual impacts, and that every finding can be substantiated. All findings are classified as requiring 'No Action' or 'Action'.

Information about the observations and any associated actions are registered in a database used as a consulting tool, which determines action priorities for a community. The monitors and implementing team hold daily coordination meetings and are in continuous coordination with the Project team to define the monthly monitoring plan. The status of each finding can be tracked to closure, though observations cannot be modified by the Project team.



## Monitoring results

The PESMP has been implemented in all 34 communities. More than 2,000 observations had been reported as at May 2010. Of these, the majority (75%) were classified as 'No Action'. The remaining 25% required 'Action', of which 80% were solved by scheduled construction activities and the remaining 20% by the devising of new activities.

## Conclusions

The PESMP represents the first participatory monitoring programme that has been carried out in the construction phase of a major oil and gas development project in Peru. It is considered a successful programme that could serve as a model for similar projects in South America and beyond, and particularly in the context of vulnerable communities.

Community participation in Project assurance processes was achieved through careful selection of a specialist organization to implement the programme. The monitors have provided the Project with timely and valuable information, helping to guarantee that community concerns are addressed effectively. A significant amount of trust has been built between the monitors, implementing organization, Project and contractor staff. Monitors ensure that their communities receive accurate information regarding the overall social and environmental performance of the Project. In doing so, they also address any inaccurate perceptions that their community may have about project activities.

Testimonies from the implementing organization and community monitors themselves show that the monitors feel confident and are better informed regarding environmental and social management during pipeline construction. In addition, monitors are becoming more efficient communicators with the Project, their own communities and with local authorities, indicating that objectives relating to continuous training and mentoring are being met. This has also contributed to the monitors gaining respect of their community members and neighbouring communities.

Finally, due to community involvement in the social and environmental aspects of pipeline construction, potential conflicts have been avoided and grievances related to community expectations have decreased. Local training and participation have helped in the interpretation of the construction process, mitigation measures and Project performance, and have promoted transparency and trust with local community members. Positive impacts are now viewed as far outweighing any negative impacts.



## Managing opportunities and benefits

Oil and gas projects can often generate opportunities for Indigenous Peoples to participate in and benefit from activities that may help them fulfil their aspiration for economic and social development. International policy makers, Indigenous Peoples and their advocates usually now expect this from companies operating in indigenous territories.

The scale and nature of appropriate benefit and development opportunities that can be provided by oil and gas companies to Indigenous Peoples will vary according to the size and scale of the project, as well as aspirations and needs of Indigenous Peoples. For example, in certain cases, indigenous groups might be more focused on benefits that support their traditional livelihoods and culture, while in other cases, they might seek benefits which support their aspirations to participate in the mainstream economy. In other cases, indigenous groups may seek benefits which support their traditional ways and rights, as well as provide both immediate and long-term economic opportunities. In all cases, it is important to identify, plan and implement benefit sharing and development programmes in close consultation with affected communities of Indigenous Peoples.

Project benefit sharing arrangements can involve financial and non-financial arrangements, some of which are outlined below.

## Employment and procurement

The employment of Indigenous Peoples in project-related activities is one possible benefit that oil and gas companies can provide to Indigenous Peoples. This is something that Indigenous Peoples are increasingly demanding of oil and gas companies operating on their lands. For example, in Australia, Canada and Alaska, it is common for employment and procurement arrangements to be included as part of agreements with affected indigenous groups. The Surface Use agreement between the Native Alaskan Kuukpik Corporation and Atlantic Richfield Corporation, which included provisions for the preferential hiring on the Alpine oil project of local indigenous residents, as well as first preference for local Indigenous Peoples for available contract work, is another good example.<sup>43</sup>

Employment opportunities may be either direct, i.e. staff, or indirect through procurement of goods and services. Indigenous Peoples can be under-represented in oil and gas industry employment and contracting relative to their representation in the population around the project. Employment and procurement provisions may therefore offer opportunities for Indigenous Peoples to benefit, particularly in areas where there are few other economic opportunities.

Employment and procurement provisions for Indigenous Peoples can take various forms (some of these can be equally applicable to local communities more generally). These provisions include:<sup>44</sup>

- a general principle to preferentially employ or contract Indigenous Peoples;

<sup>43</sup> Haley, Sharman (2004). 'Institutional Assets for Negotiating the Terms of Development: Indigenous Collective Action and Oil in Ecuador and Alaska'. In: *Economic Development and Cultural Change*, Vol. 53, No. 1, October 2004.

<sup>44</sup> For further information on this issue see the ICMG Good Practice Guide: *Indigenous Peoples and Mining*, Chapter 5, Section 5.3, 'Strengthening the Community Asset Base'; and the Australian Government, Department of Industry, Tourism and Resources *Working with Indigenous Communities* (2007), Chapters 10 and 11: [www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf](http://www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf)



- recruitment and procurement strategies focused on enhanced opportunities for Indigenous Peoples;
- the establishment of recruitment procedures that are fair and transparent, and culturally sensitive;
- skills development for Indigenous Peoples and indigenous businesses to increase their opportunities to be recruited or engaged;
- adaptations to working practices to accommodate indigenous customs and values;
- requirements for contractors to employ or sub-contract Indigenous Peoples;
- time-bound targets for indigenous employment and procurement;
- providing indigenous apprenticeship/traineeship, on-the-job training schemes and mentoring;
- the provision of cultural awareness programmes for all employees—indigenous and non-indigenous—as part of induction and re-induction processes;
- the establishment of culturally sensitive retention strategies, such as the provision of ongoing mentoring and support for indigenous employees;
- partnering with an institution that is well positioned to attract additional public funding and technical support, and attract external clients that can share the cost and achieve economies of scale; and
- addressing racism and other forms of discrimination in the workplace.

### Financial benefits

Benefits for Indigenous Peoples can also take the form of various types of financial compensation and benefit sharing arrangements.<sup>45</sup> Indigenous Peoples often seek some form of financial compensation package from companies wishing to operate on their land, and in some national contexts (such as Bolivia



and Australia) companies may be required by law to provide financial compensation to the indigenous groups on whose land they wish to operate.

Financial arrangements vary and can cover compensation, benefit sharing and revenue sharing arrangements that can be disbursed either in cash or as financing for specific community development projects. In practice, the nature and scale of these arrangements vary according to the demands of indigenous groups, the legal context, the company's willingness to negotiate and the scale of the project in question. For example, with regards to the scale of a project, an exploration project will usually only enter into a straightforward arrangement involving compensation for impacts, whilst a large-scale project operating over several decades would be better suited to a more comprehensive life-of-project compensation and benefit sharing arrangement.

Examples of financial arrangements, which can comprise one or a combination of the following, are

<sup>45</sup> For further information on financial arrangements between companies and Indigenous Peoples see: O'Faircheallaigh, C. 2003. 'Financial Models for Agreements between Indigenous Peoples and Mining Companies', *Aboriginal Politics and Public Sector Management Research Paper No. 12*, Griffith University, Brisbane, [www.griffith.edu.au/business/griffith-business-school/pdf/research-paper-2003-financial-models.pdf](http://www.griffith.edu.au/business/griffith-business-school/pdf/research-paper-2003-financial-models.pdf).



listed below. All of these benefit sharing arrangements are subject to compliance with relevant anti-corruption requirements. They include:

- Fixed payments—these may be:
  - Formally agreed milestone payments, such as a sign-on payment, or a payment on approval of permits, or at the commencement of operations. Such payments can provide incentives for communities to participate in the development of the project.
  - Single up-front payments, usually for a right of way (for example for a pipeline project) or for compensation for specific losses (for example loss of land, access to resources or assets).
  - Fixed annual payments, which are usually disbursed into community development funds or programmes. Depending on the context, these payments may be defined as benefit sharing payments or social investment payments. In some cases there is no basis for their amount. In other cases these annual payments may be based on a certain proportion of the total capital expenditure on a project (capex) (typically in the range of 0.5% to 1.0% of capex in Australia, although the exact amounts may not be directly and explicitly linked to capex).
- One-off payments related to particular events that may happen at an undetermined time in the future. These can include payments linked to fixed milestones such as project closure, or provision for unexpected events such as compensation for oil spills.
- Production- or revenue-based payments—an annual payment (royalty) for use of the resource or land, based on a percentage of production or profits. Production- or revenue-based payments usually take one of three forms:
  - a percentage or an amount based on annual production;
  - a percentage of the annual revenue; or
  - a percentage of annual profits.

Production- or revenue-based arrangements are negotiated on a case-by-case basis as there is often no overriding framework for fiscal arrangements. Because royalties are subject to variation (for example, due to oil and gas price fluctuations if they are value-based or due to the financial success of the project in the case of royalties on profit), in many cases a guaranteed annual minimum payment can be built into royalty-type arrangements to provide consistency.

- Equity—a share of ownership in the project, and subsequent share of dividends paid to shareholders, in return for financial investment, or in recognition of the value of support from the indigenous group or the rights which the group has over the resource. The principal benefits of an equity share are that the shareholder will have a direct share of the profits from the project and hold some degree of control in the company or project. However, the income stream from an equity share is less guaranteed than from production- or revenue-based payments, and equity participation poses the risk of negative returns and exposure to project capital injections, for example, for expansion. This type of payment is less common and is usually found in circumstances where indigenous groups hold strong land rights (for example in Canada).

The basis of these payments and the choice of which financial arrangements to include in an overall agreement will depend on the particular context, the regulatory framework, and on what is considered to be fair and reasonable by all concerned parties.

### **Sustainable development commitments and funds**

Sustainable development commitments are another type of benefit that oil and gas companies can provide to Indigenous Peoples. Development commitments can be made toward supporting a variety of programmes, which can include:

- education and training programmes;
- livelihood support programmes;
- cultural heritage preservation and enhancement programmes;
- health and well-being programmes; and
- local infrastructure projects.

These commitments will usually take the form of a specified financial amount and a specific range of activities, so that investments are made in programmes, which the indigenous groups may not otherwise be able to create. Good practice

examples demonstrate the importance of developing and implementing sustainable development commitments in consultation and partnership with Indigenous Peoples.

One way of managing these investment flows is either through an internal company fund or an external fund subject to standard governance and transparency procedures. Funds are a form of institutional arrangement to manage and disburse financial streams.

In the case of external funds, these are usually legally distinct institutions set up as separate entities independent of the company, the indigenous representative body or the government, and with the specific purpose of managing and disbursing the financial streams. The financial streams in trusts may be disbursed immediately or invested for future use. There are often strict legal rules that determine what a trust can or cannot do, how it is managed and how it relates to its original donor. The independent status of trusts may also allow them to be tax-efficient and attract funding from other sources, such as government revenues or financial streams from other companies.

In the case of an internal company fund or programme, this type of disbursement involves financial streams being managed internally within the company, or within a specially set up fund, which is usually a formal organizational structure within the business, with agreed budgets and decision-making criteria that may involve external stakeholders.



## Nexen Aboriginal Education Award Programme (AEAP), scholarships and bursaries

Aboriginal peoples in Canada have certain rights and special status under government legislation and, as such, many aspects of the oil and gas industry's interactions with Aboriginal peoples are regulated. These conventions provide guidance and consistency on how the industry engages with Aboriginal peoples, and ensure respect for a valued culture and preservation of traditional lifestyles.

Nexen has a comprehensive approach to Aboriginal relations, focused on the development of mutually-beneficial relationships. This includes a goal of having company workforce demographics reflect local demographics, including Aboriginal peoples. To achieve this, Nexen offers scholarships and bursaries to provide financial support to Aboriginal students enrolled in programmes that align with Nexen's business needs and, ultimately, with the sustainability of the Aboriginal community. Additionally, partnerships are in place with universities and colleges that promote skills development within the Aboriginal population.

Nexen's Aboriginal scholarships are accessed by students through their respective educational institution or chosen through the in-house Nexen Aboriginal Education Award Programme (AEAP). AEAP was established in 2002 and, since then, has provided support to more than 100 Aboriginal students. The programme also serves as a mechanism to identify and track the academic progress of top students, so that they might be recruited upon graduation. Many AEAP recipients also participate in Nexen's Summer Student Employment Programme. During the summer of 2010, Nexen provided summer employment to 12 Aboriginal students from universities across Western and Eastern Canada.

Nexen also works closely with educational and training institutions to develop programmes that prepare Aboriginal peoples for employment. The company's current post-secondary and education coalition partners include: The University of Calgary, Mount Royal University and





Southern Alberta Institute of Technology in Calgary, Alberta; University of Alberta and Northern Alberta Institute of Technology in Edmonton, Alberta; University of Manitoba; University of Saskatchewan; First Nations University of Canada; and the University of British Columbia. Nexen is pleased to continue its support of the University of Calgary's Native Ambassador Post-Secondary Initiative. This programme of having students inspire Aboriginal children to stay in school and pursue post-secondary education is proving to be successful, and Nexen's support ensures that the programme reaches as many students and families in the community as possible.



Nexen is also the lead partner of the Aboriginal Leadership and Management Programme at The Banff Centre. This programme is designed to provide capacity-building leadership training to First Nations, Métis and Inuit communities. The company's contributions assist participants by providing resources to offset the cost of tuition. Nexen has recently re-directed its support towards the Nexen Chair in Aboriginal Research, to conduct research over the next few years that will strengthen Aboriginal communities in meaningful and lasting ways. That vision is consistent with the company's policy statement regarding Aboriginal Relations at Nexen, which is to create mutually-beneficial relationships with Aboriginal people and communities.

Nexen is also a supporter and sponsor of the Sunchild E-Learning High School. The programme is online, allowing students to access course materials, programme tools and instructor aids at any time, anywhere. In some areas, additional support is needed to ensure Aboriginal students complete their secondary school requirements in order to achieve the entrance standards for University. Nexen has a bursary programme for students in Grades 8 to 12, at schools in Alberta and Saskatchewan that are in proximity to our operations. These mathematics and science bursaries reward those who stay in school, as well as promote excellence in courses that are core to technology-based industries such as that of Nexen.

The results of these and other Aboriginal relations efforts are tangible. Today, Nexen employs a number of people of Aboriginal ancestry, and encourages all employees to embrace the rich and diverse culture of the Aboriginal community in Canada. Nexen's efforts to develop Aboriginal employment opportunities contributed to the company's inclusion in the list of Canada's Best Diversity Employers for 2010.



## Woodside's Reconciliation Action Plan

Woodside is Australia's largest independent energy company, producing liquefied natural gas, liquefied petroleum gas, condensate and oil for customers around the world. A substantial portion of Woodside's business activities cover operations and development opportunities in the remote Pilbara and Kimberley regions of northern Western Australia.

In 2006, Reconciliation Australia, an independent, not-for-profit entity, launched the Reconciliation Action Plan (RAP) initiative. This programme encourages organizations to make a public commitment to the national effort to close the unacceptable gap in life expectancy between indigenous and other Australians.

In 2009 Woodside developed its own RAP, which contained more than 30 commitments across the areas of relationships, respect and opportunities. Woodside has now been able to achieve all of the commitments in the 2010 RAP.

Further to the inaugural RAP, Woodside has released the 2011–2015 Reconciliation Action Plan which will underpin the company's efforts over the next five years to advance reconciliation within Woodside and the wider Australian community.

Woodside has learned that a RAP is as much a process as an outcome, with the final document reflecting a wide range of collaborative input from the indigenous communities in which the company operates, as well as from indigenous and non-indigenous employees. Woodside's approach created new avenues for dialogue, and a fresh message for indigenous communities and technical staff.



The five-year timeframe of the Woodside RAP allows for longer-term commitments, which Woodside is determined to translate into better outcomes for indigenous communities.

Every commitment in this RAP, grouped under the headings of Respect, Relationships and Opportunities, is defined by a set of measurable goals to be achieved between now and 2015.

These include:

- tripling the Indigenous workforce in the 2009–2012 period, and having Woodside's Australian-based workforce reflect the demographics of Western Australia's Indigenous population by 2015;
- 15 indigenous university students with Woodside cadetships, and a further 10 with Community cadetships;
- supporting more than 200 indigenous students to participate in science and engineering training camps;
- supporting 100 indigenous students to participate in the Clontarf Foundation programme that utilizes football as a conduit to gaining improved outcomes for indigenous education;
- supporting five indigenous organisations to complete governance training; and
- a 100% increase in Woodside's Reconciliation Interest Group membership.

These commitments build on achievements under Woodside's first RAP and are just the first steps on a long journey of reconciliation for Woodside.

Woodside was the first Australian oil and gas company to develop a RAP, and views the Plan as integral to its business. It is a high-visibility reference framework and is becoming the foundation for key initiatives in indigenous engagement.

Woodside's full commitments can be viewed at, and downloaded from, the following link:  
[www.woodside.com.au/Sustainable+Development/Social+Contribution/Our+Communities/Indigenous+Communities.htm](http://www.woodside.com.au/Sustainable+Development/Social+Contribution/Our+Communities/Indigenous+Communities.htm)

More information on the RAP initiative can be viewed on Reconciliation Australia's website at:  
[www.reconciliation.org.au/home/reconciliation-action-plans](http://www.reconciliation.org.au/home/reconciliation-action-plans)

## Summary of emerging good practice

The objective of this issues review, *Indigenous Peoples and the Oil and Gas Industry: Context, Issues and Emerging Good Practice*, is to provide a summary of the policy and legal context, key issues and emerging good practices in relation to the oil and gas industry and its interaction with Indigenous Peoples.

This section sets out some good practice considerations that have emerged for companies operating in Indigenous Peoples' territories, drawing on the discussion and case studies in this review. The list below is not intended as a comprehensive set of guidelines; rather, it provides general, entry-point considerations for companies:

### 1. General principles

- Respect the rights of Indigenous Peoples.
- Minimize adverse impacts.
- Maximize the benefits resulting from a company's operations.

### 2. Socio-economic context

- Determine whether there is potential for Indigenous Peoples to be affected.
- Understand the national and international legal context.
- Check whether the country in question has signed up to ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples.
- Understand the historical context.
- Carry out socio-economic baseline and impact assessments in participation with Indigenous Peoples, and share the findings of these assessments.
- Source advice from experts in international, national and local Indigenous Peoples issues.

### 3. Engagement and consultation

- Establish relationships with indigenous communities and their representative institutions at an early stage.

- Carry out engagement in a culturally appropriate manner.
- Provide internal cultural training for company staff who are engaging with Indigenous Peoples.
- Work with indigenous representative institutions, as well as organizations that represent their interests.
- Aim to be inclusive, taking into consideration customary decision-making processes while being sensitive to those sections of the community who may be excluded from the decision-making process, such as women and youth.
- Inform Indigenous Peoples of their rights as set out in national law.
- Include Indigenous Peoples in decision making, and develop a relationship through which respectful dialogue can occur.
- Aim to reach agreements, where relevant, with Indigenous Peoples through good faith negotiation.
- Document formal consultations.
- Develop a register of company commitments.
- Set the objective of broad community support.
- Aim to maintain broad community support through ongoing engagement and implementation of effective grievance mechanisms.

### 4. Managing impacts and issues

#### a) Generally:

- Understand how impacts may affect Indigenous Peoples differently from other community stakeholders.
- Identify, manage and monitor impacts in consultation and participation with affected Indigenous Peoples.
- Develop an Indigenous Peoples Development Plan, or similar, for use as the key management tool and broader engagement purposes.<sup>46</sup>

<sup>46</sup> The IFC Performance Standard 7 (PS7) requires its clients to manage the impacts on Indigenous Peoples of their operations through an Indigenous Peoples Plan (IPP), or a broader community development plan with separate components for Indigenous Peoples (see Annex A of PS7 for a description of the content of the IPP).



- Develop partnerships with relevant organizations to manage aspects of the company's approach to indigenous relations.

**b) With regard to specific issues:**

- Land:
  - Avoid culturally sensitive areas and minimize the size of land used by the project to the extent possible.
  - Understand the rights claimed by affected Indigenous Peoples with respect to their lands, as well as those rights as recognized under national law.
  - Offer affected communities of Indigenous Peoples fair compensation and due process.
  - Offer land-based compensation or compensation-in-kind in lieu of cash compensation where feasible.
  - In cases where land access or acquisition has been negotiated previously by a third party, including government, conduct due diligence to identify whether legacy issues may exist that could impact the relationship with indigenous communities.
- Resettlement:
  - Avoid the physical resettlement of Indigenous Peoples.
  - Physical relocation should only be considered after the company has established that there is no feasible alternative to avoid relocation.
  - Enter into good faith negotiations with affected Indigenous Peoples and seek their broad support before considering resettlement.
- In-migration:
  - Assess and analyse the potential and specific nature of in-migration impacts in Indigenous Peoples' lands.
  - Develop and implement, where relevant, measures to avoid, minimize or manage project related in-migration in consultation with affected Indigenous Peoples.
  - Develop measures to strengthen the resilience of indigenous groups to the effects of in-migration.



- Traditional knowledge and cultural heritage:
  - Assess potential impacts on cultural heritage and traditional knowledge in consultation with Indigenous Peoples as part of the social and environmental assessments.
  - Develop measures to protect cultural heritage, where relevant, in consultation with Indigenous Peoples.
  - Respect and value Indigenous Peoples' traditional knowledge and seek their consent for any use of their traditional knowledge.
  - Support indigenous aspirations to preserve and enhance their cultural heritage and traditional knowledge.
- Natural resource use and environmental issues:
  - Consult with affected Indigenous Peoples to understand their environmental concerns about oil and gas operations and how these can be addressed.
  - Partner with Indigenous People in identifying, mitigating and monitoring environmental impacts.
  - Involve indigenous groups, where relevant, in environmental protection, rehabilitation and restoration programmes.



## 5. Managing opportunities and benefits

- Employment and procurement:
  - A general principle to preferentially employ or contract Indigenous Peoples as feasible.
  - Time-bound targets for indigenous employment and procurement.
  - Skills development for Indigenous Peoples and indigenous businesses to increase their opportunities to be recruited or engaged.
  - Adaptations to working practices to accommodate indigenous customs and values.
  - Cross-cultural training for indigenous and non-indigenous employees and contractors.
- Partnering with an institution that is well positioned to attract additional public funding and technical support, and engage with external clients that can share the cost and achieve economies of scale.
- Establish measures to address racism and other forms of discrimination in the workplace.
- Financial benefits and sustainable development:
  - Provide, where relevant, a combination of financial and non-financial benefit sharing packages to Indigenous Peoples (including financial compensation and benefit sharing packages and non-financial benefits such as preferential employment and procurement).
  - Develop and manage benefit sharing arrangements in participation with Indigenous Peoples.
  - Provide capacity building and training to Indigenous Peoples in relation to the management and implementation of benefit sharing arrangements.



## Appendices

### Useful resources

#### General—Indigenous Peoples

Anaya, Prof. S. James. 2011. *Extraction of natural resources a key cause of abuse of indigenous peoples' rights*. <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11405&LangID=E>

ARPEL. 2009. *Relations with Communities Management System: Socio-Environmental and Reputational Risk Management Manual*. [www.arpel.org/library/publications/search/?page=3](http://www.arpel.org/library/publications/search/?page=3)

Australian Government, Department of Industry, Tourism and Resources. 2007. *Working with Indigenous Communities*. [www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf](http://www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf)

Business for Social Responsibility and First Peoples Worldwide. 2004. *Guidebook: Resource/Extractive Companies and Indigenous Peoples Engagement: Recipe for Dialogue Project*. <http://commdev.org/content/document/detail/1923>

Cobo, Jose Martínez. 1981–83. *Study of the Problem of Discrimination Against Indigenous Populations*. <http://social.un.org/index/IndigenousPeoples/Library/Mart%C3%ADnezCoboStudy.aspx>

United Nations Development Group. 2009. *Guidelines on Indigenous Peoples' Issues*. [www.un.org/esa/socdev/unpfii/documents/UNDG\\_guidelines\\_EN.pdf](http://www.un.org/esa/socdev/unpfii/documents/UNDG_guidelines_EN.pdf)

United Nations. 2009. *State of the World's Indigenous Peoples*. The Secretariat of the Permanent Forum on Indigenous Issues. [www.un.org/esa/socdev/unpfii/documents/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf)

Whiteman, Gail and Mamen, Katy. 2002. *Meaningful Consultation and Participation in the Mining Sector? A Review of the Consultation and Participation of Indigenous Peoples within the International Mining Sector*. The North-South Institute. [http://network.idrc.ca/uploads/user-S/10606988501lit\\_rev\\_final.pdf](http://network.idrc.ca/uploads/user-S/10606988501lit_rev_final.pdf)

#### Free, prior and informed consent (FPIC)

Committee on the Elimination of Racial Discrimination. 1998. *General Recommendation XXIII (51) Concerning Indigenous Peoples*. Adopted at the Committee's 1235th meeting, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4. [www.austlii.edu.au/au/journals/AILR/1998/6.html](http://www.austlii.edu.au/au/journals/AILR/1998/6.html)

The Extractive Industries Review. 2003. *Striking a Better Balance* (The Final Report of the Extractive Industries Review). Volume I: 'The World Bank Group And Extractive Industries'.

Forest Peoples Programme. 2004. *In search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent*. Marcus Colchester and Fergus MacKay. Paper presented to the 10th Conference of the International Association for the Study of Common Property, Oaxaca, August 2004. [www.forestpeoples.org/documents/law\\_hr/fpic\\_ips\\_aug04\\_eng.pdf](http://www.forestpeoples.org/documents/law_hr/fpic_ips_aug04_eng.pdf)

Forest Peoples Programme. 2004. *Indigenous Peoples' Right to Free, Prior and Informed Consent and the World Bank's Extractive Industries Review*. Fergus MacKay. [www.forestpeoples.org/sites/fpp/files/publication/2010/10/eiripsfpicjun04eng.pdf](http://www.forestpeoples.org/sites/fpp/files/publication/2010/10/eiripsfpicjun04eng.pdf)

Forest Peoples Programme. 2007. *Making FPIC—Free, Prior and Informed Consent—Work: Challenges and Prospects for Indigenous Peoples*. Marcus Colchester and Maurizio Farhan Ferrari. FPIC Working Papers. [www.forestpeoples.org/sites/fpp/files/publication/2010/08/fpicsynthesisjun07eng.pdf](http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/fpicsynthesisjun07eng.pdf)

IFC. 2012. *Performance Standard 7*.  
[www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES)

Mehta, Lyla and Stankovitch, Maria. 2000. *Operationalization of Free Prior Informed Consent*. Contributing paper to the World Commission on Dams.  
[www.dams.org/docs/kbase/contrib/soc209.pdf](http://www.dams.org/docs/kbase/contrib/soc209.pdf)

Oxfam. 2010. *Guide to Free Prior and Informed Consent*.  
<http://resources.oxfam.org.au/filestore/originals/OAUs-GuideToFreePriorInformedConsent-0610.pdf>

Stoll, Julie Ann; Barnes, Rodger; and Kippen Eleanor. 2008. *Uranium Mining—Information Strategy for Aboriginal Stakeholders*. Paper presented at the Minerals Council of Australia annual Sustainable Development Conference, Darwin, 15–19 September 2008.

United Nations Economic and Social Council, Commission on Human Rights. 2004. *Standard Setting: Preliminary working paper on the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources that would serve as a framework for the drafting of a legal commentary by the Working Group on this concept*. Submitted by Antoanella-Iulia Motoc and the Tebtebba Foundation to the Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, Twenty-second session, 19–23 July 2004.  
[www2.ohchr.org/english/issues/indigenous/docs/wgip22/4.pdf](http://www2.ohchr.org/english/issues/indigenous/docs/wgip22/4.pdf)

United Nations Economic and Social Council, Commission on Human Rights. 2004. *Review of developments pertaining to the promotion and protection of the rights of indigenous peoples, including their human rights and fundamental freedoms: Indigenous peoples and conflict resolution*. Working paper submitted by Miguel Alfonso Martínez to the Sub-Commission on the

Promotion and Protection of Human Rights, Working Group on Indigenous Populations, Twenty-second session, 19–23 July 2004.  
[www2.ohchr.org/english/issues/indigenous/docs/wgip22/2.pdf](http://www2.ohchr.org/english/issues/indigenous/docs/wgip22/2.pdf)

Foley Hoag LLP. 2010. *Implementing a Corporate Free, Prior, and Informed Consent Policy: Benefits and Challenges*. A report commissioned by Talisman Energy Inc.  
[www.foleyhoag.com/NewsCenter/Publications/eBooks/Implementing\\_Informed\\_Consent\\_Policy.aspx?ref=1](http://www.foleyhoag.com/NewsCenter/Publications/eBooks/Implementing_Informed_Consent_Policy.aspx?ref=1)

## Useful websites

### United Nations (UN)

Anaya, Prof. S. James—Special Rapporteur on the rights of Indigenous Peoples  
[www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/SRIPeoplesIndex.aspx](http://www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/SRIPeoplesIndex.aspx)

Office for the United Nations High Commissioner for Human Rights—‘Indigenous Peoples’ home page.  
[www.ohchr.org/EN/Issues/IPeoples/Pages/IndigenousPeoplesIndex.aspx](http://www.ohchr.org/EN/Issues/IPeoples/Pages/IndigenousPeoplesIndex.aspx)

United Nations Permanent Forum on Indigenous Issues. [www.un.org/esa/socdev/unpfii/index.html](http://www.un.org/esa/socdev/unpfii/index.html)

UN Secretary-General’s Special Representative on Business and Human Rights—‘Indigenous Peoples’ home page. [www.business-humanrights.org/SpecialRepPortal/Home/Materialsbytopic/Groupsaffected/Indigenouspeoples](http://www.business-humanrights.org/SpecialRepPortal/Home/Materialsbytopic/Groupsaffected/Indigenouspeoples)

United National Educational, Scientific and Cultural Organization (UNESCO) and Indigenous Peoples: Partnership for Cultural Diversity.  
[http://portal.unesco.org/culture/en/ev.php-URL\\_ID=35393&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=35393&URL_DO=DO_TOPIC&URL_SECTION=201.html)

World Bank—'Indigenous Peoples' home page.  
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTINDPEOPLE/0,,menuPK:407808~pagePK:149018~piPK:149093~theSitePK:407802,00.html>

The Oil, Gas and Mining Sustainable Community Development Fund (CommDev)—'Indigenous Peoples' home page. [http://commdev.org/section/topics/indigenous\\_peoples](http://commdev.org/section/topics/indigenous_peoples)

## ICMM

General webpage on Indigenous Peoples.  
[www.icmm.com/page/208/indigenous-peoples](http://www.icmm.com/page/208/indigenous-peoples)

ICMM. 2005. *Mining and Indigenous Peoples Issue Review*. [www.icmm.com/page/1161/mining-and-indigenous-peoples-issues-review](http://www.icmm.com/page/1161/mining-and-indigenous-peoples-issues-review)

ICMM. 2010. *Good Practice Guide: Indigenous Peoples and Mining*.  
[www.icmm.com/library/indigenouspeoplesguide](http://www.icmm.com/library/indigenouspeoplesguide)

## IPIECA

IPIECA Publications Library: [www.ipieca.org/library](http://www.ipieca.org/library)  
 See the following titles in the 'Social Responsibility' section:

- *Human rights and ethics in the oil and gas industry*
- *Guide to operating in areas of conflict for the oil and gas industry*
- *A Guide to Social Impact Assessment in the Oil and Gas Industry*

## Indigenous Peoples organizations, NGOs and research institutes

International Work Group for Indigenous Affairs.  
[www.iwgia.org](http://www.iwgia.org)

Indigenous Peoples of Africa Coordinating Committee (IPACC). [www.ipacc.org.za](http://www.ipacc.org.za)

Center for World Indigenous Studies (CWIS).  
<http://cwis.org>

Forest Peoples Programme. [www.forestpeoples.org](http://www.forestpeoples.org)

Indigenous Peoples' Center for Documentation, Research and Information. [www.docip.org](http://www.docip.org)

Cultural Survival. [www.culturalsurvival.org](http://www.culturalsurvival.org)

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Tebtebba (Indigenous Peoples' International Centre for Policy Research and Education), Philippines.  
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IPIECA is the global oil and gas industry association for environmental and social issues. It develops, shares and promotes good practices and knowledge to help the industry improve its environmental and social performance, and is the industry's principal channel of communication with the United Nations.

Through its member-led working groups and executive leadership, IPIECA brings together the collective expertise of oil and gas companies and associations. Its unique position within the industry enables its members to respond effectively to key environmental and social issues.

#### Company members

Addax Petroleum	Occidental
BG Group	OMV
BP	Petrobras
Chevron	Petronas
CNOOC	Petrotrin
ConocoPhillips	PTT EP
eni	Qatargas
ExxonMobil	RasGas
Hess	Repsol
Hunt Oil	Saudi Aramco
Husky Energy	Shell
KPC	SNH
Mærsk	Statoil
Marathon	Talisman
Nexen	Total
NOC Libya	Woodside Energy

#### Association members

African Refiners Association (ARA)
American Petroleum Institute (API)
Australian Institute of Petroleum (AIP)
Brazilian Petroleum, Gas and Biofuels Institute (IBP)
Canadian Association of Petroleum Producers (CAPP)
Canadian Petroleum Products Institute (CPPI)
European Petroleum Industry Association (EUROPIA)
International Association of Oil & Gas Producers (OGP)
Petroleum Association of Japan (PAJ)
Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean (ARPEL)
South African Petroleum Industry Association (SAPIA)
The Oil Companies' European Association for Environment, Health and Safety in Refining and Distribution (CONCAWE)
United Kingdom Petroleum Industry Association (UKPIA)
World Petroleum Council (WPC)

#### IPIECA

5th Floor, 209–215 Blackfriars Road, London SE1 8NL, United Kingdom  
Telephone: +44 (0)20 7633 2388 Facsimile: +44 (0)20 7633 2389  
E-mail: [info@ipieca.org](mailto:info@ipieca.org) Internet: [www.ipieca.org](http://www.ipieca.org)