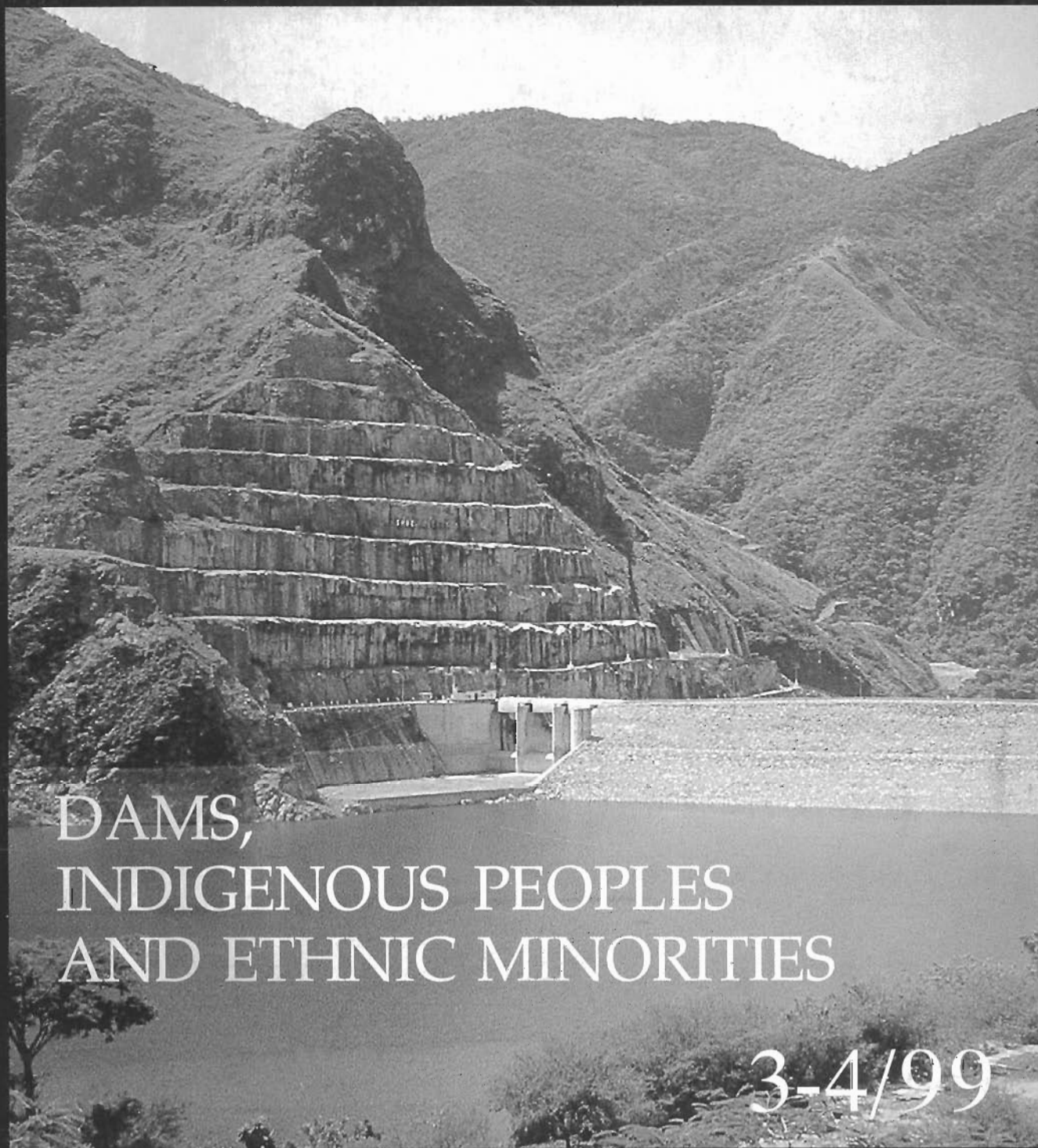




Indigenous Affairs

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DAMS,
INDIGENOUS PEOPLES
AND ETHNIC MINORITIES

3-4/99

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Cover: Chixoy Dam, Guatemala
Photo: Jaroslava Colajacomo

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Introduction

SHARING
POWER:

DAMS,
INDIGENOUS
PEOPLES
AND
ETHNIC
MINORITIES

WHY WE DON'T WANT TO MOVE

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

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

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

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

The Akawaio Indians,
Upper Mazaruni District, Guyana, 1977 ²

As long as

By Paulus Utsi (Saami)

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

When our homes have been destroyed and our lands
devastated,
where will we live?
Our lands, our livelihoods have dwindled
The lakes have risen
The rivers have run dry
The streams sing with sorrowful voices

The lands blacken, verdure wilts
The birds become silent and flee.

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

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

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

I. Indigenous Peoples, Ethnic Minorities and National Development

Summary

The objective of this paper is to assess the extent to which Indigenous Peoples and Ethnic Minorities have gained or lost from large dam projects.³ Like many previous studies on the theme, it finds that indeed large dams have had very serious impacts on these peoples' lives, livelihoods, cultures and spiritual existence. Due to structural inequities, cultural dissonance, pervasive and institutional racism and discrimination, and political marginalisation, Indigenous Peoples and Ethnic Minorities have suffered disproportionately from the negative impacts of large dams, while often being among those who have been excluded from sharing the benefits.

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

Encouragingly, substantial movement has already been achieved towards a consensus on 'Best Practice' options,

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

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

Difficulties with Definitions

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

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

Despite resistance from some countries, the general trend at the United Nations has been to accept that many of the so-called 'tribal peoples' of Africa, Asia and the Pacific are indistinguishable from 'Indigenous Peoples' as far as international law and standards are concerned.⁴

Indigenous Peoples themselves insist on the principle of self-identification, which they see as an intrinsic part of their right to self-determination.⁵ The principle of the self-identification of groups is recognised in Article 8 of the Draft Declaration on the Rights of Indigenous Peoples, which is currently under discussion at the United Nations Human Rights Commission.⁶

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

'Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.'

The concept of a 'minority' is a much broader and more encompassing one and has been popularly used to include any social group which distinguishes itself from the national majority, whether through nationality, religion, race, culture, language, caste or sexual orientation. It is however generally accepted that the term 'minority' refers not to numerical minorities within a nation State but to groups that suffer some degree of domination or discrimination by more powerful or numerous groups. In practice, the UN Human Rights Commission and its subsidiary bodies have addressed the concerns of minorities when they can show that they are culturally, religiously or linguistically distinctive from the dominant population, have some degree of group identity and have suffered evident abuse of their fundamental human rights based on policies or practices of discrimination.⁷

Many international lawyers agree with indigenous peoples that there is no need for an external definition of either the terms 'indigenous peoples' or 'minorities'. They note that the very term 'peoples' which is fundamental to the constitution of the United Nations is itself undefined.⁸

Special characteristics of Indigenous Peoples

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

- vulnerability to being disadvantaged in the development process
- close attachment to ancestral territories and to natural resources in these areas
- self-identification and identification by others as members of a distinct group
- an indigenous language, often different from the national language
- presence of customary social and political institutions primarily subsistence-oriented production.⁹

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

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

- a) priority in time with respect the occupation and use of a specific territory;*
- b) the voluntary perpetuation of cultural distinctiveness, which may include aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions;*
- c) self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and an experience of subjugation, exclusion or discrimination, whether or not these conditions persist.'*¹⁰

Rights of Indigenous Peoples and Minorities under international law

In accordance with international law, members of Indigenous Peoples and Minorities enjoy all the

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

Rights to land and territories

Among the most important for the purpose of this study is the recognition of the rights of Indigenous Peoples to the ownership, control and management of their traditional territories, lands and resources. These rights were first set out in the International Labour Organisation's Convention #107 on 'Indigenous and Tribal Populations', of 1957, and were later expanded on, in 1989, in a revised Conventions #169 on 'Indigenous and Tribal Peoples'.¹¹ Articles 14 and 15(1) of Convention #169 state:

Article 14

- 1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.*
- 2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.*
- 3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.*

Article 15

- 1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.*

The ILO's Conventions broke new ground in that they established the principle that 'aboriginal title' derives from immemorial possession and does not depend on any act of the State. The term land is generic and includes the woods and waters upon it.¹²

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

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

Indigenous Peoples and Relocation

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

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

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

- 1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.*
- 2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.*
- 3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.*
- 4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through*

appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. *Persons thus relocated shall be fully compensated for any resulting loss or injury.*

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

Article 30 of the Draft Declaration acknowledges that:

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

Rights of restitution

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

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

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

*'The Committee especially calls upon States parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned and otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.'*¹³

Other key rights

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

In applying the provisions of this Convention, governments shall:

- a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;*
- b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;*
- c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.*

The right to self-determination

The existing ILO Conventions regarding indigenous peoples are unique in a number of respects, perhaps most importantly in their recognition of the **collective** rights of the indigenous **group** to own land and other resources,

enter into negotiations and regulate the affairs of its members in line with customary laws. To a limited extent, therefore, Indigenous Peoples are already recognised by international law as autonomous seats of power within States.

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

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

*'the Committee emphasizes that the right of self-determination requires, inter alia, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (Article 1(2)). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP [Royal Commission on Aboriginal Peoples] recommendations on land and resources. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with Article 1 of the Covenant.'*¹⁴

Historically, European nations did not hesitate to recognise the rights of Indigenous Peoples in the regions that they were 'discovering' to act as sovereign nations, hold territory, own land, exercise their customary law and maintain their own forms of government. Indeed they often based their claims to indigenous territories on their conquest of, or alliance with, Indigenous Peoples.¹⁵ Accordingly treaties were often signed with Indigenous Peoples as binding agreements between sovereign powers.¹⁶

The question of Indigenous Peoples and corresponding rights is likely to continue as a major item of discussion at the United Nations for some years.¹⁷ For the purposes of this study what is important is to recognise that one of the key reasons that Indigenous Peoples identify themselves as such is because they assert this right to self-determination. By virtue of this right they seek to renegotiate their relations

with the States in which they now find themselves in order to achieve greater autonomy in their social, cultural, economic and political development. At the minimum what they are seeking is the right to control their territories and to ensure that no developments should be imposed without their free and informed consent as expressed through their own representative institutions.

Rights of Minorities

By contrast with Indigenous Peoples, minorities enjoy far fewer special rights under international law. Whereas the duty of States to protect minorities was one of the organising principles of the League of Nations in the first part of the 20th century, since the second World War international law has been constructed around the interdependent concepts of the rights of peoples and the rights of individuals within nation states.¹⁸

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

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

The language is very cautious. As it stands, international law does not recognise the group rights of minorities but only affirms the individual rights of members of minorities. The European Convention on Human Rights is no more explicit and only applies to individuals and does not guarantee substantive minority rights at all. Even these special provisions are too much for some States. The French Republic, for example, has made a formal declaration with respect to the International Covenant of Civil and Political Rights that 'Article 27 is not applicable so far as the Republic is concerned'.¹⁹

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

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

citizens as well as protection of their other fundamental rights and freedoms.

Other relevant international standards

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

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

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

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

The full implications of these provisions have yet to be determined. An intersessional working group under the Conference of Parties of the Convention is to look into the matter further in early 2000.²⁰

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

- there is a clear borrower government commitment to adhere to the World Bank's policy
- acceptable mechanisms are in place to ensure indigenous participation in the full project cycle
- a special project component is developed which:
 - makes an assessment of the national legal framework regarding Indigenous Peoples
 - provides baseline data about the Indigenous Peoples to be affected
 - establishes a mechanism for the legal recognition of Indigenous Peoples' rights, especially tenure rights
 - includes sub-components in health care, education, legal assistance and institution building

- provides for capacity-building of the government agency dealing with Indigenous Peoples
 - establishes a clear schedule for fitting actions related to Indigenous Peoples into the overall project, with a clear and adequate budget
- final contracts and disbursements are conditional on government compliance with these measures.²¹

Recently, too, the European Union has adopted a policy resolution on Indigenous Peoples and Development which recognises that '*indigenous peoples have the right to choose their own development paths, which includes the right to object to projects, in particular in their traditional areas*'.²²

International agencies working in other sectors such as forestry and conservation have also begun to recognise Indigenous Peoples' rights to the use, ownership and control of their lands and territories. The International Tropical Timber Organisation's Guidelines for Natural Forest Management accept ILO and World Bank standards towards Indigenous Peoples. Similarly, recognition of indigenous tenure and participation is also enjoined by the Intergovernmental Panel on Forests. Principles and criteria #2 and #3 of the Forest Stewardship Council for voluntary certification are explicit on the need to recognise and legally establish Indigenous Peoples' legal and customary rights to land and insist that no forestry projects should go ahead on their lands without the people's consent. The World Conservation Union's (IUCN) new protected area categories accept Indigenous Peoples as owners and managers of Protected Areas. New IUCN and WWF policies endorse the UN Draft Declaration on the Rights of Indigenous Peoples, recognise their rights to own, control and manage their territories, and accept the principle that conservation initiatives should only go ahead in indigenous areas with the free and informed consent of the traditional owners. The World Commission on Protected Areas has also just adopted guidelines for implementing these principles. Since the 1992 United Nations Conference on Environment and Development (UNCED), there has been an intergovernmental consensus that Indigenous Peoples should be involved in policy making and they have been accepted as a 'Major Group' that should be involved in implementation of Agenda 21.²³

National policies towards Indigenous Peoples and Ethnic Minorities

At the national level the diversity in the way government agencies relate to Indigenous Peoples and Ethnic Minorities is very great. As noted in Section 7 below, some countries have signed or inherited treaties with the

Indigenous Peoples who now fall within their national territories. These treaties, which are interpreted in international law as international agreements, may accord these Indigenous Peoples clearly defined rights and provide them with an important measure of self-governance.²⁴

In addition to such international arrangements, many governments have adopted explicit or implicit policies towards Indigenous Peoples and Ethnic Minorities Policies which range from those which try to ignore or overcome ethnic differences and encourage the rapid assimilation of ethnic groups into the mainstream to those which purposefully try to maintain their distinctiveness. Both extremes are associated with human rights abuse. Assimilationist policies that deny ethnic differences and the right to maintain cultural traditions, while contrary to the international laws noted above, remain all too common, the situation of the Kurds in Turkey being one of the most obvious examples.²⁵ At the other extreme enforced segregation, expressed through policies of *apartheid* and 'ethnic cleansing', are considered to be 'crimes against humanity' and have been widely condemned.²⁶

Integration

Most States seek to implement intermediate policies between these two extremes. A policy of integration was actively promoted by the International Labour Organisation in the 1950s. The underlying belief was that peoples' traditional practices were obstacles to the improvement of their conditions of life and employment and the need was to institute temporary protections of indigenous and tribal peoples' rights while encouraging their gradual integration into the national majority. Integrationist policies are still actively implemented in much of Sub-Saharan Africa and Asia and are considered crucial for nation-building and for overcoming 'tribalism'.²⁷

Pluralism

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

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

In Latin America in particular, a number of countries have revised their constitutions so that they explicitly recognise their multi-cultural and pluri-ethnic character.²⁸ Measures have been instituted accordingly to encourage bilingual and intercultural education, recognise indigenous territories, institute local self-governance and create autonomous provinces. Likewise in India a constitutional amendment has been passed recognising tribal self-rule.²⁹ Pluralist policies come closest to meeting the expressed demands of many minorities and most indigenous peoples. They provide some scope for self-definition and a measure of self-determination, allowing the peoples themselves to choose their development path.

An encouraging finding of the WCD joint consultation on 'Dams, Indigenous Peoples and Ethnic Minorities' held in Geneva in July 1999 was the realisation that, with the exception of Malaysia and Namibia, the others of the seven countries from which case studies were drawn had moved away from out-dated integrationist approaches. Canada, Guatemala, Chile, Norway and the Philippines, have now adopted policies which can be broadly grouped together as 'pluralist', providing much greater scope for self-governance and the protection of distinctive identities and rights (see Table 1).

Table 1
SOME NATIONAL POLICIES ON IPs and EMs³⁰

	<i>Other</i>	<i>Assimilation</i>	<i>Integration</i>	<i>Pluralism</i>
Norway:		Pre-1950s		Post-1970s
Canada		Pre-1960s		Post-1980s
Guatemala	1980s (genocide)			1990s
Malaysia		1990s		
Philippines	historical		1960s	1990s
Chile		1980s		1990s
Namibia	historical (isolation)	1990s		

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

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

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

*'...organized efforts to increase control over resources and regulative institutions in given social situations, on the part of groups and movements of those hitherto excluded from such control'.*³¹

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

Notwithstanding this consensus, practices of participation vary widely. As one analyst notes "repeated and token use of the terminology has devalued it; participation has come to mean so many things that it sometimes means nothing...".³² Participatory approaches range from token consultation with those likely to be affected by development decisions, through hasty data gathering techniques, such as rapid rural appraisal, to more participatory appraisal methods, and finally to much more inclusive participatory processes which involve locally-affected groups not just in planning, but also in negotiation, implementation, management, monitoring and evaluation.³³ Full participation implies that the local communities actually have control of development processes and resources and can veto development options that do not suit their interests and thus implies negotiated settlements, in which they are able to secure outcomes that are acceptable to them.³⁴ Obstacles to effective participation inhere not only in the procedures and prejudices of developers and government agents, but in the legal situation of the peoples concerned. Indigenous Peoples and Ethnic Minorities are especially at risk from ineffective participation procedures due to the lack of recognition of their rights, notably to land and natural resources, and due to the prejudice and cultural gulf between them and 'decision-makers'.

It is beyond the scope of this study to provide a full review of the challenges to effective participation and

negotiation. Development agencies such as the World Bank and other multilateral development banks have elaborated detailed procedures aimed at ensuring that so-called 'project beneficiaries' are involved in proposed projects.³⁵ NGO reviews of the application and performance of these procedures emphasise that particular attention should be given to the following:

- a long lead in time to ensure effective communications and planning
- timely and full access to project related documents in the right languages and in forms intelligible to the peoples concerned
- workshops and public meetings to discuss findings, proposals and plans
- open review of alternatives
- openness to the 'no project' option
- adequate resources to allow effective participation, including funds for institution- and capacity-building
- clear and legally enforceable contracts between Indigenous Peoples, borrower governments and the Banks
- effective participation of Indigenous Peoples in monitoring and mid-term evaluations
- easily accessible and simple complaints procedures and effective systems for the redress of grievances.³⁶

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

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

Eminent domain and Indigenous Resistance

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

Indira Gandhi ³⁷

Central to the disputes between Indigenous Peoples, Ethnic Minorities and Governments over imposed development projects, is the question of whose will should prevail in the absence of consensus or mechanisms for further negotiation. Through exercise of the principle of eminent domain, many States grant themselves the power to override local objections and expropriate private property in the national interest. Such powers are usually regulated by enabling laws, such as Land Acquisition Acts, which set out the official processes of land acquisition and establish procedures for the due compensation of landowners.³⁸

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

'The official declaration of 'national purpose' can no longer be taken as self-evident. It should become a subject of open public debate and holistic appraisal. Such appraisal can no longer be a techno-managerial exercise limited to establishing positive benefit-cost ratios. Factors like distributive justice, the right to live with human dignity, the right to adequate livelihood and resource base, sustainability etc., have to be brought to bear on each project to decide on its desirability and justifiability.' ³⁹

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

In any case, many Indigenous Peoples and some Minorities question whether the principle of eminent domain can legally be extended over their territories at all, on the grounds that they are themselves sovereign peoples

with the right to self-determination. Some countries come close to accepting that Indigenous Peoples, by virtue of their residence in their territories prior to the creation or extension of the nation state, do have both prior rights to their lands and natural resources and the right to self-governance, including the right to veto proposed developments on their lands.

In the USA, legislation on this issue has been through a long and contentious evolution. Since the formation of the Union, the United States has recognised Native Americans as 'domestic dependent nations' and deals with them on a 'government-to-government' basis.⁴⁰ However, the sovereign rights of Native Americans over their lands and resources are qualified in a number of ways. As the Tuscarora Indians discovered in their dispute over the Niagara Power Project, under US law Indigenous Peoples who have acquired full property rights to their lands, in line with normal land titling procedures, are subject to expropriation 'in the national interest' like other US citizens. However, those Indians who have signed treaties with the USA or prior colonial powers and/or have been resettled on officially recognised reservations are more securely protected, at least in law, from expropriation. Reservation lands, which are owned by the United States government and held in trust for the benefit of Indian nations, cannot be used for a purpose "inconsistent with the purpose for which such reservation was created or acquired". Likewise, transfer of reservation lands from the Indians cannot be made except "by a treaty or convention entered into pursuant to the Constitution".⁴¹

During the late 19th century the US courts disputed whether Indian reservation rights extended to include their rights to water, a matter that was settled in the Indians' favour in a historic case in the US Supreme Court in 1908.⁴² The case established the so-called 'Winters Doctrine' which, in effect, 'reserved the Indians' rights to water' giving them priority over non-Indians. The Federal Government subsequently abused this power and used it to impose national water policies on member States of the Union during the middle years of this century, while making minimum provisions for affected Indians. However, since the 1970s, improved processes of public participation and indigenous mobilisation have established both the *de jure* and *de facto* right of reservation Indians to veto water projects on their lands.⁴³ Just such developments allowed the Yavapai people to reject the establishment of the Orme dam on the Colorado River which would have flooded them off the Fort MacDowell reservation, although it took them 30 years of persistent pressure before the Federal Government acceded to their rejection of the dam.⁴⁴ Notwithstanding these protections, the US Congress reserves for itself 'plenary power' which gives it full legislative jurisdiction over Indians and Indian lands irrespective of their

residual sovereignty and is unlimited and beyond judicial review.⁴⁵

Canadian law relating to Indigenous Peoples is very complex. Indigenous rights are governed by a series of instruments, including the 1867 Indian Act (as amended) and Sec. 35 of the 1982 Constitution Act, which protects 'existing aboriginal rights' and historic and modern treaties, the latter being negotiated and constitutionally protected land claims and self-government agreements. In the case of modern treaties, the rights of any one Indigenous Peoples depend on the specific self-government agreements and land claims settlements reached between them and the state. As a general rule eminent domain doctrines may be applied to native lands, including reserve lands, under the Indian Act, provided the Crown complies with its fiduciary/trust obligations.⁴⁶ The Cree and Inuit in the James Bay project area were in the somewhat unusual situation of not having signed any treaty with either Canada, the province of Quebec or the French colonial powers. Their aboriginal sovereign rights as First Nations to their lands thus remained un-extinguished when Hydro-Quebec and the Governments of Quebec and Canada began in the early 1970s, without Cree consent and against their express wishes, to construct the La Grande hydro-electric megaproject. This situation endured until the Cree negotiated the James Bay agreement

This controversy over the James Bay development projects in Quebec helped clarify the way Aboriginal rights relate to the sovereign powers of the State. In the 1960s, as Hydro-Quebec noted in its submission to the WCD meeting in Geneva, in line with their then current assimilationist policies, Canadian 'Governments thought that Indian rights, Indian status and treaties were things of the past'.⁴⁷ Accordingly, when the James Bay hydro-electric development project was first announced in 1971, no provisions were made to deal with the Indigenous Peoples' claims. Intense litigation followed and drew on an historical judgment handed down in the Supreme Court in 1973 recognising the continued existence of Aboriginal land rights if they had not been extinguished by the Crown.⁴⁸ Since the Cree and Inuit peoples were in this situation of not having surrendered their rights they were able, in August 1973, to obtain an injunction from the Quebec Superior Court ordering a halt to the James Bay hydro-electric project. The court agreed that the Province could not '*...develop of otherwise open up these lands for settlement without... the prior agreement of the Indians and Eskimo*'.

Construction of the project was already well under way, however, and the Cree state that it did not halt even in the face of the court injunction. Although the injunction was later overturned by a higher court, turning the Cree once again into 'squatters' on their own lands, it and the 1973 judgment provided the basis on which the Cree and Inuit were able to negotiate a compromise with the Provincial and

Federal authorities agreeing, the Cree argue under duress⁴⁹, to the surrender their rights in exchange for compensation and legally enforceable agreements as part of any development of their lands.⁵⁰ A recent decision by the Supreme Court of Canada has now ruled that negotiation shall be the way to resolve legal disputes between Aboriginal rights and development.⁵¹

These advances in Canadian law should not obscure the fact that disputes between the Canadian government and Indigenous Peoples over hydro-power projects remain very acrimonious. One unresolved case concerns the second stage development on the Churchill river, the so-called Gull Island power complex, which is being developed by a consortium comprised of Newfoundland and Labrador Hydro (65.8%) and Hydro-Quebec (34.2%), which is responsible for the design of the project and will purchase most of the electricity generated. The massive 3,200 MW project, which overlaps Quebec and Newfoundland, comprises two dams and two river diversions and will flood a large area of the hunting territory of the Innu people who live both sides of the provincial boundary. The whole area is the subject of an unresolved land claim by the Innu people, currently being negotiated with the Canadian government. According to the human rights organisation, Survival International, the authorities in Quebec and Newfoundland stubbornly refused to consult the Innu before signing a pact in March 1998 intended to open the way for the construction of the project [in March 1998], a position they have been forced to go back on due to indigenous protests. Daniel Ashini, chief negotiator for the Labrador Innu has insisted that 'this project can only proceed with Innu consent'.⁵² Explaining the apparent discrepancy between the treatment of the Cree and Inuit in James Bay since the mid-1970s and the current treatment of the Innu, James Wilson of Survival International notes that 'Canada has proved very poor at first recognising the inherent rights of Indigenous Peoples.' The Innu have yet to be clearly recognised as the owners of their lands and are reluctant to surrender their rights, as the Cree and Inuit were obliged to do.⁵³

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

Somewhat as in Canada, in Australia, the legal situation is complicated by the diversity of regional legislations. Aboriginal peoples in the Northern Territory enjoy relatively strong protection under the Aboriginal Land Rights (Northern Territory) Act of 1976. Aboriginal lands in the territory are managed by Land Councils, which act subject to the consensus of the traditional land-owners. They enjoy what is effectively a right of veto on development proposals and although technically the Federal authorities can override this in the national interest, this power has never been exercised. Aboriginal sacred sites may also be protected nationally by the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, which allows the Commonwealth Minister for Aboriginal Affairs to protect such sites. This may prevent sacred sites being flooded, overriding national interest arguments. A case in point was the proposed Todd River dam near Alice Springs, which would have flooded an important Aboriginal women's site, but which was halted when the site gained protection under the Act. There are also (mostly lesser) levels of protection under State and Territory laws. Australian law has now, belatedly, recognised 'native title' as deriving from immemorial possession, continuing occupation and the exercise of customary law. Although 'native titles' are not entirely exempt from expropriation, Aboriginal land-owners have a right to negotiate, followed, in the absence of agreement, by a tribunal determination which, however, may be overridden on the basis of national interest.⁵⁴ By contrast, in Papua New Guinea, where 98% of the national territory is recognised as belonging to traditional land-owners, the State retains its power to expropriate in the national interest, subject to the usual provisions of due acquisition and 'just' compensation.⁵⁵ In New Zealand, however, Maori land rights are guaranteed by the Treaty of Waitangi and thus offer the Maori stronger protection against expropriation without consent.⁵⁶

In India, this issue is likely to be contested in the courts in the near future. In 1996, the Indian Constitutional provision granting autonomy to villages was extended under the Panchayats (Extension to Scheduled Areas) Act to recognise self-rule at the level of the *panchayat* (village level sub-district or parish), giving adivasi communities, governed through *gram sabha* (village assemblies), the powers of local government and control over natural resources. Whether or not these changes will be interpreted as granting *gram sabha* the right of veto over imposed developments or control of national waters is yet moot. The Act insists on consultation with the *gram sabha* and the provision of detailed information about the need for the acquisition and about the lands to be made available in compensation, before the acquisition of lands for a public purpose can take place. However, a revised Land Acquisition Act is presently being debated in India and may undo some of these gains. That India's 'Scheduled Tribes' need special protections from

expropriation is evident from the fact that although Scheduled Tribes make up just 7% of the population of India, they account for 40% of the 30 million people displaced by development between 1951 and 1995. Only one third of those displaced to make way for development in India have been resettled.⁵⁷

In other countries, too, the State's power of eminent domain is qualified. In the Philippines, for example, the law on environmental impact assessments requires 'community consent' before a clearance certificate can be issued for a development to go ahead although it is disputed whether this consent should be obtained at the village (*barangay*), municipal or provincial level. In Colombia, the courts have established that a law requiring community consent to projects is of equal weight to that granting the State the power of eminent domain. Likewise in Chile, legal contradictions between the country's electricity law and Indigenous Peoples Law have led to injunctions temporarily halting construction of the controversial Ralco project which will flood the Pehuenche people off their lands.⁵⁸

Eminent Domain and the Private Sector

The move away from state-led development models towards development based on foreign direct investment and private sector initiatives may, in any case, force a rethink of the general applicability of the doctrine of eminent domain. With private companies increasingly building, owning and maintaining large dams and associated works, and raising funds for their projects on the international capital markets, the distinction between public interest and private profit has become increasingly blurred. With the era of State planning coming to an end, it may no longer be publicly acceptable for State agencies to expropriate the properties of private citizens to make way for developments by private corporations. Leading dam-building enterprises such as Hydro-Quebec – a for-profit para-statal company – already accept the principle that dam-building should not go ahead without the consent of those directly affected.⁵⁹ This principle has also been publicly endorsed by the International Hydropower Association.⁶⁰

II. Indigenous Peoples, Ethnic Minorities and Dams:

The Impacts of Large Dams

Although on paper, indigenous peoples (and to a far lesser extent ethnic minorities) have a range of internationally agreed rights that offer considerable legal protection from the abuses of state and private sector power, these rights

are rarely observed in projects involving dam development. Overall, the available literature indicates that the experience of indigenous peoples and ethnic minorities with regard to dam projects has been one of:

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

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

Disproportionate impact

As the World Bank acknowledges in its 1994 *Bank-wide Review of Projects Involving Involuntary Resettlement*, those resettled as a result of dam projects are generally from the poorest and most vulnerable sections of society.⁶¹ Such vulnerability reflects not only their exclusion from the decision-making process and economic and political institutions that would enable them to exercise genuine control over their lives and livelihoods but also, in many instances, from racism and from discriminations of class, caste and ethnicity.

Worldwide, indigenous peoples and ethnic minorities make up a disproportionately large percentage of those who lose their livelihoods to dams, either because their communities are directly affected by dam projects or because of the 'knock-on' effects of such projects.⁶² In some instances – the Nubians of Sudan, for example – communities have been shifted several times to make way for dams or the development projects associated with them.⁶³

In Africa, numerous dam projects have involved the forced relocation of indigenous groups or ethnic minorities: in many cases, such as the Volta Dam, the projects have impacted several different ethnic groups at once.⁶⁴

In the USA, it was poor black sharecroppers who bore the brunt of the impacts of the massive dam building programme undertaken in the Tennessee Valley from 1933

to 1946,⁶⁵ whilst native Americans have suffered disproportionately from the dams built by state and federal authorities in the arid West, both through the direct loss of their reservation lands and through the illegal abstraction of their water.⁶⁶

In the Philippines, almost all of the larger dam schemes that have been built or proposed have been on the land of the country's 6-7million indigenous people.⁶⁷ In India, according to government figures from the mid-1980s, between 40-50 per cent of those displaced by development projects have been adivasis:⁶⁸ credible estimates for the numbers moved to make way for dams alone have been placed between 14 to 40 million, of which 60 per cent are adivasis or Dalits ("untouchables").⁶⁹ Future planned dams development also disproportionately threatens Indigenous Peoples and Ethnic Minorities. In the Philippines, for example, many of the dams planned under the 1993-2005 power development programme will affect indigenous land.⁷⁰

Resettlement as Ethnocide

As numerous commentators acknowledge,⁷¹ involuntary resettlement is a traumatic process, regardless of one's social or economic background. The World Bank, for example, has stated:

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

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

'Persons who are uprooted and rehabilitated in another place have to undergo the entire process of resocialisation and adjustment. Traditional social relations and

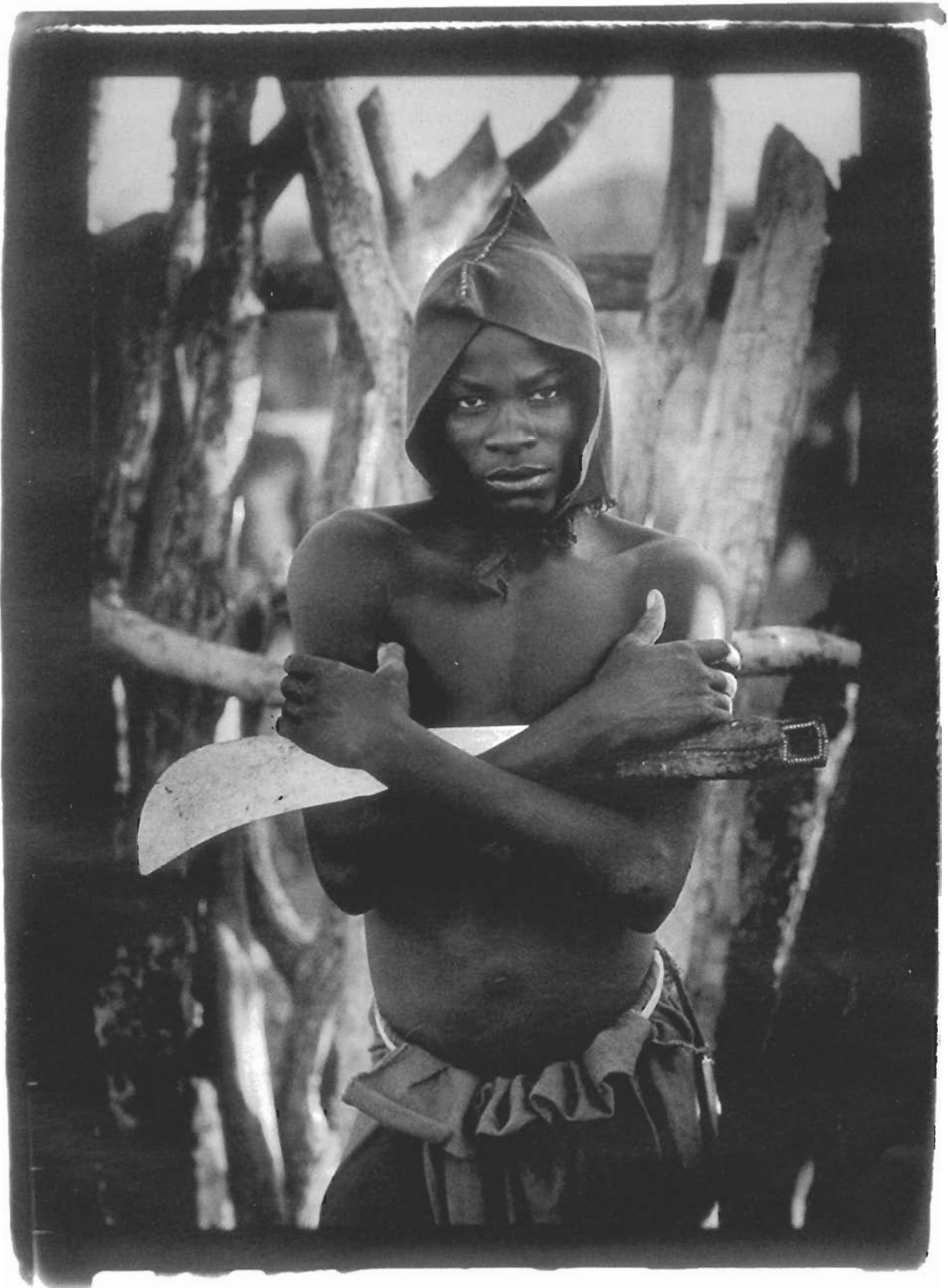


Photo: Mark Hakansson

community networks break down as a result of displacement, leading to physical and psychological stress. It also leads to economic disruption, often resulting in impoverishment and insecurity. Inadequate and unplanned resettlement, with little or no share in the benefits from the project that has caused this displacement, further increases the misery of those affected. A hostile host population in the new area only serves to aggravate the trauma. Fall out in the form of alcoholism, gambling, prostitution and even morbidity is not unknown.⁷²

And, as Ackerman points out,

*'Even where planning is effective, some (especially the aged) will never come to terms with their new homes. For them the transition period ends only with death.'*⁷³

In the case of indigenous peoples and ethnic minorities, however, the psychological and social traumas of resettlement are exacerbated by the discrimination that they frequently face from mainstream society; by the strong cultural, economic and religious ties that often bind them to their particular land; and, in many cases, by a past history of oppression, dislocation and exploitation. For example, the Waimiri-Atroari Indians of Northern Brazil, were estimated to number some 6,000 in 1905. Eighty years later, massacres and disease left only 374 Waimiri-Atroari alive. In 1987, the gates of the Balbina Dam were closed, flooding two villages in which lived 107 of the remaining members of the tribe and blocking the annual upstream migration of the turtles whose eggs are an important part of their diet. The Waimiri-Atroari are now further threatened by a plan to divert the river Alalau to increase the flow into the Balbina Reservoir.⁷⁴

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

*'Cattle is one thing we have received from God and we depend on them very heavily. If the cattle die from the construction of the dam, we will also die, because we depend on the cattle. This is a form of killing the Himba people – it is a mystery to us why the government is doing this to us.... God created all peoples equal. We should be treated the same way as all other peoples.'*⁷⁵

All too often, forced resettlement can thus prove the final blow to their integrity as a people. What may appear to planners as a minor impact⁷⁶ - the submergence of ancestral graves, for example, or even specific forest glades or river pools - can have serious social repercussions, since the economic and religious life of many indigenous peoples is

often linked to specific topography of their lands. A case in point are the Maria Gonds of India, who are threatened with displacement by the Bhopalpatnam and Inchampalli dams. Maria social, economic and religious life is not merely linked to the forest but rather to specific parts of the forest. Each clan has its own clan god who in Maria belief is the true owner of the land, which is not transferable. Megalithic monuments erected to the dead connect the clan direct to the soil.⁷⁷ Discussing the Akawaio Indians of Guyana, threatened in the 1970s by the Upper Mazaruni Dam (now cancelled), Survival International also notes the way in which the physical landscape of indigenous groups is intimately linked to their social, political and cultural way of life:

*'The Akawaio have invested the landscape with special significance. It is an environment transformed by their ancestors in conjunction with the mystic forces of the universe. All its features – its rivers, falls, mountains, rocks, savannahs and valleys – were designed by their forebears, whose names and deeds are recorded in myth, song, dance and poetry. The vital forces of each locality are linked to the human community. They protect, guide, feed and even chastise its members. Thus the landscape is dynamic, every part is living, functional, has meaning and moral value.'*⁷⁸

Such intimate relationship with the land – often expressed in mytho-poetic language⁷⁹ that cannot be reduced to the cost-benefit framework of planners (see below) – has been stressed time and again by indigenous peoples facing relocation and/or the upheavals of imposed development. As the World Council of Indigenous Peoples put it in 1985:

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

*Next to shooting Indigenous Peoples, the surest way to kill us is to separate us from our part of the Earth. Once separated, we will either perish in body or our minds and spirits will be altered so that we end up mimicking foreign ways, adopt foreign languages and build a foreign prison around our Indigenous spirits, a prison that suffocates rather than nourishes as our traditional territories of the Earth do. Over time, we lose our identity and eventually die or are crippled as we are stuffed under the name of 'assimilation' into another society.'*⁸⁰

Indeed, such is the tie that they feel for their lands and cultural sites, that many indigenous groups and ethnic

minorities perceive the flooding of their lands as a deliberate act of genocide. In the case of the planned Ilisu Dam in Turkey, for example, which will require the forcible relocation of 12,000 -16,000 people, mainly ethnic minority Kurds, and flood the historic town of Hasankeyf, the United Kurdish Committee has stated that it sees the dam as part of 'a deliberate policy of the Turkish authorities to eliminate all traces of Kurdish civilisation.'⁸¹

Failure to identify the cultural distinctiveness of affected peoples

In 1982, the World Bank adopted a special policy on 'Tribal Peoples in Bank-financed Projects', designed to ensure that their rights and interests were taken into account in future project planning. The policy was revised in 1991.⁸² Subsequent internal reviews in the World Bank have revealed a persistent failure of World Bank staff to apply this policy in practice.

In the case of the Sardar Sarovar Project in India, for example, between 70% and 80% of the 200,000 people directly threatened with relocation to make way for the reservoir are classified by the Government of India as members of 'Scheduled Tribes'. World Bank staff persistently dodged applying the Bank's policy on tribal peoples to the project on such grounds as the people wore factory-made shirts or had images of Hindu gods in their homes. Project staff continued to deny the applicability of the policy even after the World Bank's legal expert specifically noted that the affected ethnic groups 'fell within the scope of the World Bank's policy on Tribal people (OMS 2.34)'.⁸³ The Report of the Independent Review of Sardar Sarovar identifies the Bank's failure to recognise the cultural distinctiveness of the peoples in the submergence zone as one of the main obstacles to their successful resettlement and rehabilitation.⁸⁴ The review concluded:

*'In drafting the terms and conditions of the 1985 credit and loan agreements, the Bank failed to take adequate account of the fact that a large proportion of those at risk from the development of the Sardar Sarovar Project are tribal people. This meant that insufficient account was taken of the principles enshrined in the Bank's 1982 Operational Manual Statement outlining its policies regarding tribal peoples.'*⁸⁵

The African Development Bank (AfDB) has encountered a similar problem with its own project portfolio. In a 1998 review of its experience financing dam projects in Africa, the AfDB noted a persistent failure to identify the main 'target groups' at the time of feasibility studies or appraisal. The review concluded that, as a result, 'on the whole, the environmental performance of 6 out of 10 of the

projects considered in this review is insufficient owing to the absence of measures to mitigate their negative impact as well as the failure to adequately address the population resettlement issues'.⁸⁶

No Prior Informed Consent

ILO Convention 169 clearly states that relocation of indigenous peoples should only take place with their "free and informed consent" or, failing that, only following a process of consultation that allows for 0145effective representation of the peoples' concerned.⁸⁷

The reality for many dam-affected indigenous groups and ethnic minorities is quite otherwise. At one extreme, affected communities have in many instances been given no prior warning whatsoever of a project: the first knowledge the tribal people of Bihar had of the Kutku dam was when huts were constructed for workers and surveyors began to walk across their fields with tape measures. In other instances they have only learned of the decision to build a dam when eviction notices are pinned up in their villages. Insofar as their "participation" is later invited in the project, it is often primarily with a view to ensuring their easy eviction: in many cases input that challenges the project is deemed at best unwelcome, and at worst subversive (see below: Human Rights Abuses).⁸⁸ Likewise, the Evenks, Evens, Chukchi, northern Yakuts and Yukaghir peoples of the Republic of Sakha in Siberia were never consulted about plans to build a cascade of five dams on the Kolyma River, nor were any proper social impact studies made to help plan a future for the affected peoples. According to Vasili Robbek of the Institute on Northern National Minority Problems, the projects, which are currently under construction, 'may turn the aboriginal peoples of Kolyma into ecological refugees and may lead to ethnocide'.⁸⁹

Where affected communities are informed of projects, the information provided is frequently misleading and does not provide a basis on which to make an informed choice as to whether or not to consent to relocation. As Enakshi Thukral of the Multiple Action Research Group in India remarks of oustees affected by the Sardar Sarovar Project, 'not only were the people uninformed but they were often deliberately misinformed about the project and their future'.⁹⁰

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

displaced. It was not that they were stupid: merely that a reservoir the size of the dam's was outside of their experience. Based on what they knew of floods, they assumed that even if the river waters did rise, their villages would be safe because they were higher than the river itself.⁹¹

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

*'The governor asked for our co-operation to leave our homes. But he nicely promised to give us new homes and a good road in the village. He said every house would have electricity. Well, we have no television, no refrigerators and we don't know yet what we can use that electricity for. But it might be good to have it' says Thiang, a villager who will be relocated by the dam. 'If we had a choice we would stay and protect the forest. We feel very sad to lose the forest. But what can we do?'*⁹²

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

*'Several fluent Lao speakers complained that RC representatives failed to translate negative comments or concerns made by local citizens about the dam project. Likewise a very senior NTEC representative attending the meeting complained that local citizens were receiving misinformation about the dam's probable impacts.'*⁹³

The 'editing out' of critical voices is equally apparent within those institutions that plan, fund or construct dams. In the case of the Bio Bio Dam, Chile, a highly critical report commissioned by the World Bank, whose private sector arm, the International Finance Corporation (IFC), helped finance the dam, was heavily censored by lawyers. One third of the report has never been released, despite the fact that improved transparency on the part of project developers is one of the main recommendations in the released portions of the report. The company building the

dam also refused to release the results of a social impact study to the Pehuenche communities affected by the dam despite an agreement with the consultant who undertook it that the results would be shared with affected communities.⁹⁴

Failure to recognise the impact of loss of land and livelihood

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

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

In Ethiopia, the World Bank-funded Awash valley programme destroyed much of the forest and grazing lands on which 150,000 Afar pastoralists depended. The subsequent conversion of most of the irrigable land to cotton and sugar cane plantations led to the displacement of 20,000 people who became dependent on food relief. The Afar came to view the development project as 'punishment from God.'⁹⁵

In Brazil, the Tucuruí Dam flooded 2,430 square kilometres of tropical forest, including parts of the land belonging to the Parakana and Gavião de Montanha peoples.⁹⁶ Other indigenous communities — the Gavião Parakateje, the Asurini do Tocantins, the Krikati and the Guajajara — lost land to transmission lines.⁹⁷

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

have twice ruled that the aboriginal peoples of the Peninsula have proprietary rights over their ancestral lands.⁹⁸

In India, the dispossession of adivasi people has been a very widespread problem. India is a signatory of ILO Convention 107 and consequently legally recognises the right of 'Scheduled Tribes' to the collective ownership of the lands they traditionally occupy. In practice, however, the law is not applied and land titling procedures have not been adjusted to acknowledge tribal rights to their commons. Although some adivasi manage to acquire individual title to some of their cultivated plots many others do not. Moreover, their wider rights to pastures, shifting cultivation areas, hunting lands, collecting zones and fishing grounds are denied. Many are treated as 'encroachers' on State lands or as 'poachers' in forestry reserves and protected areas. Accordingly, in planning large dams, Government agencies distinguish between 'landed' and 'landless' adivasis thus denying compensation to those without land titles and completely ignoring the need to also compensate people for their loss of the substantial areas they use for hunting, fishing, grazing and gathering.⁹⁹

In 1985, the human rights organisation, Survival International filed a complaint about this issue with the International Labour Organisation with specific reference to the World Bank-funded Sardar Sarovar Project on the Narmada river, pointing out that by treating between 75 and 85 % of the tribal outsees as 'landless' the Government of India was in clear violation of ILO Covention 107. After receiving information from the World Bank and Indian Government, the ILO's committee of experts on the observation of conventions substantially upheld Survival International's complaint. Noting that the compensation arrangements did not ensure *prima facie* that the requirements of the Convention were met, the ILO called on the Government to revise the resettlement programme in line with the Convention.¹⁰⁰

These issues had, in fact, been brought to the attention of the World Bank and Government of India prior to the signing of the project agreements. In 1984, a World Bank consultant made specific recommendations for overcoming these problems. A national policy on resettlement should be carefully worked out. Measures should be taken to ensure that all oustees are given land in compensation, not just those who had managed to obtain legal title. Cash compensation should only be offered to oustees who rejected compensation in land. Institutional and participatory arrangements should be made to ensure compliance and the provision of services in the resettlement villages etc.¹⁰¹

Despite this, the 1985 project agreement continued to deny the rights of 'encroachers' and illegally discriminated between 'landed' and 'landless' oustees. Although in 1988,

the Government of the State Gujarat lifted the distinction between landed and landless oustees assuring two hectares of irrigable land for each oustee family, the states of Maharashtra and Madhya Pradesh continued to deny the land rights of tribal peoples without individual land titles. All three states persist in denying the tribal peoples' rights to their wider territories used for hunting, gathering, shifting cultivation, grazing and fishing.¹⁰² Dalits have faced similar problems and have also resisted their treatment at the hands of the authorities.¹⁰³

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

*'All the land under water was used by my father and grandfather for reindeer herding. Many troubles have come out of this. First, it is harder for the reindeer to find food high up in the mountains. In the springtime when they come up [from the lowlands], the grass starts to grow by the river, so that is where the reindeer would go first to find food. But now because all this area is flooded, they have to go up on the mountains where the weather is much harsher. It is snowing even in May. It is hard for us to find food for the reindeer. Also this area that is under water was used by the female reindeer to deliver their calves. We cannot use it for calving anymore, so, again, we have to go up to the mountains where it is much colder. Many of our calves freeze to death because of this... As I said, the Suorva dam was built in four different stages, which has meant that my father and grandfathers have been forced to move their settlements four times. Just imagine having to burn up your house and re-build it again – four times.'*¹⁰⁴

In the US, thousands of hectares of Indian land have been lost to dams. In North Dakota, a quarter of the Fort Berthold Reservation, shared by the Arikara, Mandan and Hidatsa peoples of the upper Missouri, for example, was flooded as a result of a staircase of dams (the Missouri River Development Project (MRDP), built during the 1950s and 1960s. The land lost included the best and most valuable and productive land on the reservation – the bottom lands along the river where most people lived.¹⁰⁵ Five different Sioux reservations also lost land. Again, the impact was quite severe: the dams destroyed nearly 90 per cent of the tribes' timberland, 75 per cent of the wild game, and the best agricultural lands.¹⁰⁶ Ultimately, the Missouri dams cost the indigenous nations of the Missouri Valley an estimated 142,000 hectares of their best land – including a number of burial and other sacred sites – as well as further impoverishment and severe cultural and emotional

trauma. A guarantee, used to rationalise the plan in the first place, that some 87,000 hectares of Indian land would be irrigated was simply scrapped as the project neared completion. As researcher Bernard Shanks puts it:

*'MRDP replaced the subsistence economy of the Missouri River Indians . . . with a welfare economy . . . As a result of the project, the Indians bore a disproportionate share of the social cost of water development, while having no share in the benefits.'*¹⁰⁷

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

*'Unfortunately, over the years that the project has been in place, the living source of information of the social impacts of the project, in the form of Elders who possess the traditional knowledge are passing away. Consequently, addressing the social impacts continues to get harder from either perspective since the western-based scientific measurement is lacking and the traditional knowledge of the Cree slowly gets lost.'*¹⁰⁸

Even when negotiated agreements seem to protect Indigenous peoples against loss of access to the resources on which they depend, they are not always effective. Section 22.2.2 of the James Bay and Northern Quebec Agreement (JBNQA) establishes as a fundamental principle 'the protection of the Cree people, their economies and the wildlife resources upon which they depend,' relying on 'an environmental and social impact assessment and review procedure established to minimize the environmental and social impact of development when negative on the native people and the wildlife resources of the territory.' However, according to the Cree:

*'The promised regime to deal with the social impacts and opportunities and to craft environmental regulation specific to the Territory has not been implemented.... Rather than an upstanding, forthright and honest fulfillment of these commitments to the Cree people, we have seen 23 years of attempts by Canada and Quebec and their entities to deny, diminish and refuse to work with the Cree people ...'*¹⁰⁹

Indeed, despite the guarantees in the JBNQA, some 5,000 square kilometers of forest have been clearcut in the Cree territory without any assessment whatsoever of its environmental or social impact.¹¹⁰

Secondary Displacement and Conflict

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

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

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

*The consequences of these events for the Harijan/Adivasi community are catastrophic. Since they lost their entire pasture lands they were forced to sell almost all of their cattle and buffaloes – some 400 animals. On the private and encroached lands that were taken, they had been growing subsistence crops such as sorghum. Anokibai, a Bhil adivasi, asks: 'If the land has gone, then we are also gone. If we don't have the land, will we then eat stones or pebbles? How will we live and how will we eat?'*¹¹¹

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

The US-funded Kaptai hydropower dam in the Chittagong Hill Tracts (CHT) in south-east Bangladesh, for example, displaced more than 100,000 Chakma people – one sixth of the total Chakma population – and flooded around two fifths of their cultivatable land. Some 40,000 of those displaced left for India and today live in Arunachal Pradesh. They have never gained citizenship for themselves or for their children born in India. A further 20,000 are supposed to have moved into Arakan in Burma. Others were dispersed within the CHT. As government officials acknowledge, the resulting land shortage and resentment of the government contributed to the bloody conflict between the Buddhist Chakma and Muslim Bengali settlers which affected the region since Kaptai was completed in 1962, and which has cost the lives of an estimated 10,000 people.¹¹²

Conflicts over land and associated inter-ethnic strife also characterised the resettlement of the Sudanese Nubians (Halfans) displaced by the Aswan High Dam. Under the resettlement scheme, the Halfans were relocated to an area occupied by Shukriya pastoralists, who continued to graze their animals on land allocated to the Halfans for farming. In 1974, the conflicts reached such a pitch that the Sudanese Army had to be called in to protect the Halfan's cultivated fields. In a study undertaken nine years after resettlement, Hussein Fahim reports: "While the Halfans were lamenting the loss of their . . . homeland, the Shukriya nomads were regarding the expropriation of their land by outsiders with great displeasure."¹¹³

Other knock-on effects of dam projects have also led to conflict which has taken an "ethnic" character, with ethnic majorities being encouraged by local politicians and economic elites to scapegoat local minorities. In the Senegal Valley, for example, the completion of the Diama and Manantali Dams on the Senegal River encouraged the politically and economic elite of the 'Moors' in Mauritania,¹¹⁴ who before had had little interest in agriculture, to appropriate river basin land in anticipation of making large profits from the development of medium and large-scale irrigation schemes.¹¹⁵ Backed by the security forces, the Moors began to take over lands from the black inhabitants of the Valley, forcibly expelling thousands of black Mauritanian nationals as 'foreigners' and expropriating their land. Senegal, meanwhile, retaliated by expelling thousands of its minority Moorish population. At least 60,000 Senegalese and black Mauritians were deported or fled from Mauritania, and twice that number of Moors left Senegal.

Indeed, in some instances, river basin development and subsequent resettlement has been deliberately used by certain interests to ferment 'ethnic' violence as part of a wider political strategy for gaining, or shoring up, political power. In the case of the Accelerated Mahaweli Project in Sri Lanka, for example, officials within the Mahaweli

Authority have admitted that, in league with militant Buddhist priests, they used the resettlement programme to drive a wedge between minority communities of Tamil-speaking Hindus and Muslims by settling poverty-stricken households from the Singala-speaking Buddhist majority within and around minority communities.¹¹⁶ As Thayer Scudder of the California Institute of Technology notes:

*'Though contrary to project goals, which stipulated that ethnic and religiously distinct populations were not to be mixed and that minorities were to receive plots according to their proportionate representation within the national population, these actions were ignored by such donors as the United States Agency for International Development and the World Bank. Subsequently, massacres on both sides occurred, in some instances in the very communities where they had been predicted.'*¹¹⁷

Some dams have contributed to armed conflict without ever being built. One of the most well-known cases is that of the World Bank-supported Chico dams project in the Philippines which threatened to displace some 80,000 Kalinga and Bontoc people from their ancestral lands.¹¹⁸ When locals protested against the project, the Marcos regime tried to undermine resistance with bribery and obfuscation. However, resistance hardened and the people resorted to civil disobedience to prevent surveyors getting access to the area. Engineers' campsites were dismantled and roads were blocked, prompting the government to send in the army and initiate a campaign of violence.¹¹⁹ The Igorot leader Macli-ing Dulag was assassinated and many people took to the hills and joined the New Peoples Army in defiance of the imposed development programme.¹²⁰ The conflict endured long after the World Bank pulled out and the project was cancelled. Local villages were repeatedly bombed and subjected to counter-insurgency programmes as a result.¹²¹

Lack of Compensation or Inadequate Compensation

Although national laws have long existed in many countries requiring compensation for those resettled by development projects, in the very many cases involving indigenous peoples, ethnic minorities and other vulnerable sections of society these laws have been more honoured in the breach than the observance. In the Philippines, for example, those resettled in the 1950s as a result of the Ambuklao and Binga Dams on Agno River still have to be compensated for their losses.¹²² Ethnic Minorities and Indigenous Peoples may suffer disproportionately in this respect as they may lack formal citizenship, residency or land tenure paperwork. According to the World Bank, one-fifth of the 10,800

people displaced by the Khao Laem Dam in Thailand were Karen. Because the Karen families did not possess legal residence papers they were considered ineligible for resettlement land or house plots, unlike ethnic Thai oustees.¹²³

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

In the case of the Volta Dam, it had been intended that sufficient land be cleared to provide every farmer with 12 acres. But by 1966, as the deadline of impoundment approached, only 6,000 hectares had been cleared from a target of 22,000 hectares. By way of comparison, the flooded area included 52,000 hectares in productive use.¹²⁴

Those resettled as a result of the Hirakud Dam in India, many of them Gonds, only received land if they were able to produce proof of ownership. As a result many were left out even though they had been cultivating their land for generations.¹²⁵ Likewise, in Turkey, contrary to national law, the vast majority of landless people displaced by the Ataturk Dam and other dams being developed as part of the Greater Anatolia Project were in many cases not compensated or rehabilitated at all, but were simply left to fend for themselves.¹²⁶

Where cash payments are made as compensation, indigenous peoples may face particular problems, particularly where they are unaccustomed to money matters and where traditions exclude the concept of land as a negotiable commodity. Disorientation by the dispossession of their lands, and often unused to handling (comparatively) large sums of money, they may squander imprudently the money given them in exchange for their lands.¹²⁷ At Hirakud, for example, the tribal oustees, 'fell prey to businessmen selling colourful tinkets and consumer items like transitors and watches, or lost their money in gambling or on liquor.'¹²⁸ This, notes the Multiple Action Research Group, was also the experience of the oustees of the Koyna project in the 1960s and more recently the Kutku dam oustees. As Karve and Nimbkar commented nine years after the Koyna dam was built, 'It was an error to hand over thousands of rupees to people who had hardly handled cash at all. Now, a number of years later, a large majority of the displaced are still without a roof over their head.'¹²⁹

Negligent resettlement planning and entirely inadequate compensation schemes characterised the Chandil and Icha dams on the Subarnarekha river in India's Bihar

State, which ended up displacing some 68,000 people and inundated 30,000 hectares of farmland and forest. The adivasis threatened by the Chandil dam protested against the project from its inception in 1975 and, in 1978, some 10,000 of them demonstrated against the dam at the construction site. Police harassment of a protest fast and then police firings on unarmed protesters caused four deaths. The project continued nevertheless and in 1982 the World Bank approved a US\$127 million loan to the project. Despite the absence of a resettlement plan, the Chandil dam's sluices were closed in summer of 1988 posing an immediate threat to some 10,000 indigenous people, while 30,000 others faced inundation over the coming 20 months as the reservoir began to fill. University researchers described scenes of mass misery, and one World Bank official advised Bank headquarters that the situation required the emergency intervention of the International Red Cross. Since then the situation has become even more critical.¹³⁰

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

The problems for the adivasi peoples being displaced to make way for the Sardar Sarovar project, noted above, were compounded in the resettlement programme. Not only were the actual numbers of project-affected persons hugely under-estimated but lands for resettling the oustees were in any case unavailable.¹³¹ Before engaging in the project, the World Bank was warned in 1984 that the Narmada Planning Authority, which was to oversee the resettlement programme 'at this point lacks the organisational strength and professional personnel to carry out a resettlement and rehabilitation project of great magnitude'.¹³² The project went ahead, nevertheless.

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

*'Planning thus far for the Narmada Sagar project resettlement is based on the realistic and innovative assumption that many oustees will not be able to acquire equivalent land to replace that flooded.'*¹³³

Gender Inequities Exacerbated

Resettlement affects women differently from men¹³⁴ and the form that it takes can greatly exacerbate existing gender inequalities, undermining the position of women and their power to exercise control over their lives.

For example, among the Cree affected by the Nelson River Diversion Project, the decline of traditional economic activities – such as fishing, hunting, trapping, and gathering – has had specific impacts on women and has affected their role in the family. Whereas Cree women and children used to accompany adult males on hunting trips, these kinds of excursions are now curtailed or carried out by men alone. Women often now simply stay at home, while social problems have increased among Cree youth.¹³⁵

In the vast majority of cases involving the forced relocation of indigenous peoples and ethnic minorities as a result of dam project, women have been denied compensation for the plots of land they have previously cultivated, largely because they do not 'own' the property or have it registered in their name. They are therefore seldom entitled to compensation. In the case of the Sardar Sarovar Project, for example, only households headed by the 'senior' male in a family or by the eldest son were deemed eligible to receive land as compensation. Women-headed households – those of widows, for example – were excluded from the resettlement package.¹³⁶

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

*'SALCRA's policy of one certificate of ownership per household has meant that Iban women's traditional rights over land have been abrogated and thus a dependency relationship is created. The new system of plantation agriculture has also eroded women's traditional equality with men in the sphere of production.'*¹³⁷

Compensation, which should have been paid to both men and women as co-owners of the land was only paid to male 'heads of household'. Some women, interviewed by me in 1987, noted that their husbands had abandoned them, taking the money and setting up house with other women, and leaving them virtually destitute. Overall, incomes declined, gathered foods became scarcer and firewood hard to find. The women also found it hard to carry on their traditional weaving and basketry, as they had lost access to forests from which to collect the

materials. Summarising the people's sense of despair one old woman told me: 'we are dead already.'¹³⁸

In cases where project-affected communities are integrated into agricultural schemes involving contract farming, such as in the Jahaly-Pacharr scheme in Gambia, where 2,000 Mandinka households were contracted to grow rice as part of a large-scale irrigation project funded by the International Fund for Agricultural Development, additional problems can arise. Because the onus of finding and organizing the labour force is placed on the contracted grower – generally the male head of the household – contract farming can create new intra-household tensions, resulting in increased divorce, domestic tension and the renegotiation of family and marital responsibilities, often to the detriment of women.¹³⁹ As Scudder notes: 'A separate problem is the frequency with which focus on a single cash crop lowers the status of women, especially in cases where they had their own pre-project fields or crops.'¹⁴⁰

Women may find themselves further marginalised where resettlement breaks up existing communities and extended family networks. As Thukral notes of women in India: 'Because women in India are much less mobile than men, the breakdown of village and social units affects them much more severely. The fact that she might be leaving relatives and friends behind, or may never again meet her daughter who is married into a village which will not be displaced, is a great cause of concern for the woman, a fear that cannot easily be brushed aside.'¹⁴¹

Where resettlement results in economic hardship, as has generally been the case for indigenous peoples and ethnic minorities, women may find themselves pressured into prostitution, bringing additional discrimination. In Laos, the provincial office of the Attapeu Lao Women's Union has reported that 15 Lao Theung women displaced by the Houay Ho dam became prostitutes for workers on the construction site. This is the first time prostitution had been recorded in the area and raises the possibility of AIDS being introduced in a region with very poor public health services.¹⁴²

Human Rights Abuses

Resettlement is often resisted, leading, in many cases, to violence and accompanying human rights abuses. In addition to the flouting of international and national laws and agreements intended to protect the economic interests of project-affected people, there are well-documented cases where oustees and their supporters have been intimidated, beaten up or murdered by State or paramilitary forces for opposing projects. Other human rights abuses against those who have resisted resettlement include the burning of homes, illegal incarceration and rape.¹⁴³

been undertaken – coupled with reports from indigenous groups and NGOs – strongly suggest that the overall picture is one of livelihoods being degraded, if not destroyed.

For example, a 1993 study by the World Bank's Operations Evaluation Department (OED) states that 'In India the overall record is poor to the extent of being unacceptable.'¹⁵² A 1990 review, also by the OED, of the Latin American region similarly stated that it was 'unable to find a single study of a Bank-financed project [in the Latin American region] which quantitatively demonstrated that a resettlement population has been adequately rehabilitated in terms of income, health or other social welfare measures.' Overall, concluded the Bank's 1994 Bank-wide Review of Projects Involving Involuntary Resettlement, 'the weight of available evidence points to unsatisfactory income restoration more frequently than to satisfactory outcomes.'¹⁵³

The 1994 Review, again undertaken by OED, was able to find only one Bank-funded dam – the Khao Laem in Thailand, which displaced mainly ethnic minority Karen – where the 'fundamental goal' of the Bank's policy had been met and 'incomes for all households rose after resettlement'.¹⁵⁴ However, the figures presented by the Bank have been criticised as misleading. Forty per cent of those displaced were ineligible for compensation or had left the resettlement sites by the time the survey, on which the OED conclusion is based, was carried out. These families – which included the displaced ethnic minorities (see above) – were thus left out of the OED survey. Furthermore, 80% of the resettlers surveyed considered themselves worse off than before displacement and five years after moving to resettlement sites were still taking part in protest rallies to demand more compensation.¹⁵⁵

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

*'Well-designed long-term research is urgently needed. In its absence, the arguments will have to rely to a large extent on case studies. What is known from them indicates that, whether short-term or cumulative, adverse social impacts, as with environmental ones, have been seriously underestimated. When combined with adverse health impacts, it is clear that large scale water resource development projects unnecessarily have lowered the living standards of millions of local people.'*¹⁵⁶

Scudder cites the Tennessee Valley as an example. According to a study by the US-based Environmental Policy Institute, despite the billions of dollars spent to develop the hydro potential of the region by the Tennessee Valley Authority (TVA), the 'evidence does not support

the widely held belief that the TVA contributed substantially to the economic growth of the Tennessee Valley region.'¹⁵⁷ A disproportionate number of the poorest families displaced were black share-croppers: according to sociologist Nancy Grant, the racial prejudice of both the local people and the planners meant that these families experienced particular difficulties in relocation.¹⁵⁸ According to Grant:

*' . . . The large-scale displacement of farm units and the subsequent relocation of families caused severe economic problems for the families and the overpopulated area in which they were forced to resettle. The tenant and poor landowner bore the brunt of readjustment . . . TVA compensated only those who could show a direct, measurable loss; it ignored those who did not have written or formal access to the lands and refused to acknowledge the local custom of informal use of non-titled land as a means for supplementing income. Land speculators and swindlers descended on the Tennessee Valley, involving families in phoney or unprofitable investments.'*¹⁵⁹

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

In India, forty years after the construction of the Nagarjunsagar Dam – one of the country's largest irrigation and hydropower facilities – the nearby villages where adivasis evicted by the dam were resettled still have no roads, no power supply, no water pumps or faucets. Poverty in the area is so acute that adivasi have resorted to selling their children to earn money. According to reports in the Indian Express, ninety per cent of children being sold for adoption in Andhra Pradesh came from hamlets occupied by Nagarjunsagar oustees: with boys valued more highly, female infanticide is common, with every family in 60 hamlets surveyed reporting at least two cases of girl deaths.¹⁶⁰

Testimony to the Sri Lanka Hearings of the World Commission on Dams also highlighted the suffering of the adivasis displaced by the Bargi Dam, Madhya Pradesh, who lost not only their grazing rights (and hence their cattle) but also their right to fish the river. According to Shripad Dharmadhikary of the Narmada Bachao Andolan: 'All in all, a prosperous, self-sufficient community was reduced to penury. Even starvation deaths were reported.'¹⁶¹ Many of those resettled have now moved to nearby towns, where they labour as construction workers, rickshaw-pullers or on road building. Indian journalist Shailendra Yashwant quotes one oustee:

*'It has killed our pride, living like animals here. Our children will never believe we were once thriving farmers. All they have seen is this filthy living.'*¹⁶²

Other studies from India also confirm a drastic fall in living standards amongst oustees at other dams. The Tata Institute of Social Sciences, for example, has surveyed the diets of oustees from the Sardar Sarovar Dam on the Narmada River and reports that resettlement has "meant a decline in the variety, quantity and quality of food consumed".¹⁶³ Similarly, the Delhi-based NGO Lokayan surveyed 258 Munda, Ho and Santal households ousted by the Srisaillam Dam and found that, since eviction, the families' incomes had declined by more than 80 per cent: average family debts had risen by more than 150 per cent.¹⁶⁴

In Latin America, the outcome of resettlement for ethnic minorities and indigenous peoples has been similarly negative. A submission to the Brazil Hearings of the WCD notes that the 2000 Kuna and 500 Embera Indians displaced by the Bayano Dam in Panama 30 years ago have suffered 'three decades of land disputes and violence' and 'a lack of adequate food, water and income'.¹⁶⁵ According to those affected, the government has broken agreement made with the Kuna and Embera when the dam was first built, as well as numerous agreements negotiated since then: the most important of these relate to compensation measures for the loss of traditional territories and the granting of legal titles to new lands.¹⁶⁶ The dam inundated the Indians' coffee and cocoa crops and squeezed them up the hillsides onto less fertile lands.¹⁶⁷

Nor is this a problem of the past. Conditions among the 800 ethnic minority Nya Heun families displaced by the recently-constructed Houay Ho dam in Laos are reported to be appalling, with people suffering from a severe lack of food, a shortage of arable land and insufficient clean water.¹⁶⁸ A researcher who visited the Houay Ho resettlement site in February 1998 found 'a sense of anger, frustration, and desperation among many of the Nya Heun villagers interviewed'.

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

A social-environmental consultant team which visited the Houay Ho resettlement site in September 1997 found that people were worse off due to the project and was very critical of how resettlement has been handled. Their trip report refers to the site as "an already serious situation of imperilled livelihood" and states that "this resettlement

site appears to be a disastrous combination of too many people on too little land with too little external support." One elderly woman interviewed in February 1998 said,

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

Those resettled have also suffered from inadequate water supplies. Most of the wells drilled at the site are either dry or contain water of poor quality. When visited in 1997, 42 families were found to be depending on one shallow well for drinking water.¹⁶⁹

Elsewhere, in Vietnam, a joint study of those affected by the Hoa Binh Dam – mainly members of the Muong, Tay, White Thai and Black Thai ethnic minorities – also reports major post-resettlement problems, including a decline in living standards. According to the study, undertaken by the Research Institute for Asia and the Pacific (Sydney) and the Institute of Science Management (Hanoi), the dam and the wider Song Da Project of which it is part has resulted 'in massive social and environmental impacts at a . . . local level.' Evacuees have insufficient land and have been forced to encroach on nearby forests, leading to 'unsustainable patterns of resource use'; water shortages are serious and common; educational and health standards 'appear to have suffered significantly'; and 'poor diet and sanitation has led to resurgence of diseases such as dysentery and goitre.' The final irony for those displaced, says the report, is that 'they are without electric light or other benefits created by the dam.'¹⁷⁰

The whole watershed

The loss of land and livelihoods is rarely restricted to the area flooded by a dam's reservoir. Those living in areas slated for resettlement sites, for example, may find their land taken over to make way for oustees. Power houses, electric transmission lines, irrigation canals and other associated works cause further displacement. Land may also be lost to protected areas and reforestation schemes established to mitigate the loss of wildlife and forest caused by the construction of a dam. Typically, protected areas are also established in watershed areas to try to limit soil erosion and consequent siltation of reservoirs and so prolong the life of the dams. Areas of land alongside reservoirs may be rendered unusable for agriculture or other uses, although it may not actually be permanently flooded. Indigenous peoples and ethnic minorities living in command areas of irrigation projects also find that as

land values rise, there is increasing pressure from politically connected outsiders to take over their land.¹⁷¹ Others who live as farmers downstream of dams lose their livelihoods, which were previously dependent on annual floods to restore fertility and water supply.¹⁷² Hydropower projects are often established to promote new industries, taking over further land, while roads and mines, associated with the dam projects draw in settlers who may take over tribal lands.¹⁷³ These impacts are rarely included in initial resettlement and rehabilitation plans and development agencies have often resisted calls from environmental NGOs for basin-wide planning before individual projects are designed and funded. Yet, as the World Bank notes, 'these regional impacts, if not well understood and planned for, can often create as many problems for indigenous and other displaced populations as the infrastructure works'.¹⁷⁴

An example of the forced relocation of an Indigenous People to make way for a national park established to protect the watershed of a dam comes from the Dumoga-Bone National Park in Sulawesi, Indonesia, which was considered a successful example of buffer zone management by the World Conservation Union.¹⁷⁵ In fact, the establishment of the Park along the watershed required the expulsion of the indigenous Mongondow people, who had been forced up the hillsides by the agricultural settlement and irrigation projects in the lowlands.¹⁷⁶

The last remnants of Sri Lanka's aboriginal people, the Vedda, were likewise expelled from the Madura Oya National Park established to protect the catchment of the controversial Mahaweli Development Programme. Although the Vedda had been demanding rights to their lands since at least 1970, they were obliged to leave their lands with the gazettelement of the Park in 1983. Brought down out of the hill forests to small settlements where they were provided houses and small irrigated rice paddies, the Vedda - traditionally hunters and gatherers supplementing their subsistence by shifting cultivation - had trouble adapting to a sedentary life. Subsequent surveys showed they resented the lack of access to forest produce, game and land for shifting cultivation and were fast losing their own language. Only one small group insisted on remaining in the forests where they were persistently harassed by officials. International protests in support of the Vedda led to Presidential promises that some land would be set aside for them but this has been a long time coming.¹⁷⁷

The Independent Review of the Sardar Sarovar Project found that compensatory reforestation in the Narmada watersheds threatened to displace a still unknown number of adivasi. The study also found that resettlement plans and social impact studies had omitted to deal with the 800 adivasi families who lost lands to establish a new town for construction workers, the tens of thousands to be displaced to establish compensatory wildlife sanctuaries,

the tens of thousands of adivasi and lower caste farmers who would lose access to resources in the resettlement area and the estimated 140,000 people (10% of them adivasis) who would be displaced by canals.¹⁷⁸

Some impacts from major projects may be felt far outside the river basin. For example, concerns were raised before construction that the Three Gorges Dam in China, which will uproot an estimated 1.5 million people, might prompt the resettlement of the Han Chinese oustees in minority areas on China's borders to consolidate central government control of border regions.¹⁷⁹ Exactly these problems are now becoming apparent. With land becoming scarce, project authorities have been encouraging displaced families to migrate to remote provinces such as Xinjiang and Inner Mongolia as members of the paramilitary Construction and Production Corps. Such colonization programmes are extremely unpopular, both with the relocated families and the host populations. In October 1998, severe tensions arose in Kashgar after Three Gorges oustees had been relocated in the area. Eight policemen were killed and the city had to be placed under curfew.¹⁸⁰ In May 1999, senior Chinese Government officials admitted that 'initial attempts to resettle displaced people in provinces like Xinjiang, Hainan, Hunan and Henan had been a failure'.¹⁸¹

Another unforeseen problem that has had serious consequences comes from the siltation of reservoirs and the streams and rivers that feed them. As well as substantially reducing the life of the dams, siltation has caused the seasonal flooding of much larger areas than dam-builders had anticipated. Ibaloy people who have lost lands to the Ambuklao and Binga Dams in this way were for many years told that the siltation had nothing to do with the dams and were denied compensation. Only recently has the government admitted some liability for these people's problems.¹⁸²

A particular problem faced by Indigenous Peoples who live downstream from dams in boreal zones comes from the discharge of power-generating water on top of frozen rivers during winter. In the case of the Kolyma dams in northern Yakutia, the resulting unseasonal floods have caused high mortalities of fur-bearing animals important to the Indigenous Peoples economy, such as musquash, ermine, squirrel and small rodents.¹⁸³

The way that large dams affect peoples' access to fisheries and water is also a major concern. In the US, the loss of water rights has now become a major issue for indigenous groups. Under the so-called 'Winters Doctrine', Indian reservations have a paramount right not simply to the water necessary to meet their present needs but their future needs as well. This right has been consistently abrogated, however, with Native Americans being denied access to the water that should flow through their reservations in favour of non-Indians. Virtually

every drop of the water accruing from the Missouri River Development Project, for example, was consigned to non-Indian use. In many cases, Indians, who have often suffered great hardship as a result of the denial of their water rights,¹⁸⁴ have had to agree to 'voluntarily' relinquishing those rights in order to obtain access to the water they required to fulfil their own development plans, for instance through extending irrigation.¹⁸⁵

The disruption of rivers due to dams has also severely impacted the fisheries on which many indigenous groups depend and which, in many instances, play a major role in their culture. For the Yakama, Umatilla, Warm Springs and Nez Perce people of the Northwest of the US, for example, salmon remain 'the core of our traditional culture and religion.'¹⁸⁶ Such peoples have seen salmon runs in their region decline drastically as a result of dams converting 'the free-flowing Columbia, Snake and other rivers into strings of slackwater pools unfamiliar to Indian people, inhospitable to salmon.'¹⁸⁷ Before dams, say the Indians:

*'It took juvenile salmon about two weeks to travel from their home streams in the Snake River to the ocean. Now it takes about two months. Many die from added stress and disease from higher temperature and slower water as well as from longer exposure to animals and fish that prey on them. . . In the final analysis, the system of dams too hungrily consumes the benefits of the river and leaves too little to nourish salmon. Salmon do not need more gizmos at the dams or bigger and better barges; they need a fair and equitable share of the water's wealth. . . Salmon are letting us know it is no longer possible for humans to uncompromisingly appropriate all of the river's benefits.'*¹⁸⁸

The tribes in the region are now fighting back and have instituted a salmon restoration plan, Wy-Kan-Ush-Mi Wakish-Wit.¹⁸⁹ Elsewhere, in Oregon, the Umatilla Confederated Tribes have filed a successful suit arguing that the Army Corps of Engineers, which constructed the Chief Joseph Dam, illegally interfered with the water flow necessary to the spawning of salmon and steelhead trout that were the basis of their economy. In this, and a similar case brought by the Colville Confederated Tribes, the court ordered the devising of a plan 'in the public interest' that would correct the problem. In many cases, the tribes have only won compensation or rehabilitation measures after decades of struggle. As the draft scoping paper for the WCD's study of Grand Coulee notes the struggle for reparations has been a long one: 'Both the Colville and Spokane [Native American] tribes felt they had been unfairly treated during [dam] construction. In 1951, 1975 and 1991, they took legal action against the government demanding reparations for the forced inundation of tribal lands, the loss of traditional fishing and root digging areas, the failure to honour agreements and treaties, and other

"historical inequities". Their main argument was that the government had never justly compensated them for their losses, despite decades old promises.'¹⁹⁰

In India, the loss of fishing rights is also a major issue. In the case of the Bargi Dam on the Narmada River, the adivasis who were forcibly relocated to make way for the dam lost their rights to fish the river when the fishing rights to the newly-created reservoir were auctioned to a big contractor: oustees could not even fish for their home consumption. Agitation by the oustees, the majority of whom are now living in abject poverty, has finally forced the Government of Madhya Pradesh to hand over the fishing rights to the reservoir and to negotiate new rehabilitation measures, including lowering the height of the reservoir in order to provide land for those relocated to cultivate until they are properly resettled.¹⁹¹

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

*'The number of those directly affected by this problem is estimated at 60,000, about 15.4 per cent of the lower Sinu basin. Fishing production, previously estimated at approximately 6,000 tons annually has decreased to 1,700 tons.'*¹⁹²

A problem that is only recently receiving international attention comes from growing evidence that methyl mercury is released from bacterial transformation of mercury accumulated in soils and strata underlying reservoirs, and may reach such high concentrations that reservoir fish become inedible. In Venezuela, the Guri dam which displaced two communities of Pemón Indians in the 1960s, was initially welcomed for providing an abundant new fishery for both the local *criollo* and Pemón communities. In 1986, a second stage of the dam, which obliged the Pemón to be resettled a second time, caused them to be forced to evacuate their homes before their resettlement site was prepared due to unexpected, heavy falls of rain.¹⁹³ Then, during the mid-1990s, researchers found that methyl mercury levels in the reservoir had become dangerously elevated and the government was obliged to ban the consumption of the main commercial species being fished in the reservoir.¹⁹⁴

A similar problem has affected the Cree living near the La Grande reservoirs in Quebec. As fish are a major part of the local Cree diet, mercury levels in their bodies have risen dangerously. By 1984, six years after La Grande complex

was completed, mercury levels in pike and walleye, two fish species important in the Cree's diet, had increased six-fold and 64% of Cree living on the La Grande estuary had blood mercury levels far exceeding the World Health Organisation tolerance limit.¹⁹⁵ [Since then, as one outcome of the James Bay agreement, steps have been taken to better understand and address this problem, according to Hydro-Quebec.] While research [has] showed that high concentrations of mercury were found in Cree blood samples before the reservoir was filled, it is clear that the reservoirs have made the situation worse. Hydro-Quebec thus made an agreement with the affected Cree to compensate them for this serious problem and an emergency programme was put in place, which consisted of regular monitoring and an intensive campaign to persuade the Cree not to eat fish from the reservoirs.¹⁹⁶ By 1993-4 measures to limit contaminated intakes had brought mercury concentrations in the Cree down to 11.5% of all tested individuals in nine affected communities, with much lower rates being recorded in women of child-bearing age.¹⁹⁷ However, the social impacts were substantial. Since the Cree rely on fish for sustenance during hunting and trapping activities, the mercury problem discouraged these activities and has led to an increasingly sedentary lifestyle. Accompanying dietary changes have contributed to significant increases in obesity, cardiovascular disease and diabetes, previously virtually unknown.¹⁹⁸ In the opinion of many Cree, the message of the information campaign that 'country food' is bad for you drove a wedge into their identification with their land, with significant cultural repercussions.¹⁹⁹

Inadequate processes of restitution

A particular problem highlighted by the participants at the WCD Joint Consultation on 'Dams, Indigenous Peoples and Ethnic Minorities' in Geneva in July 1999, is the absence or failure of mechanisms to reconstitute Indigenous Peoples and

Ethnic Minorities for past losses and injuries done by dams. The Ibaloy people displaced by the Ambuklao and Binga dams on the Agno River in the Philippines had to wait nearly 25 years before their appeals for assistance with resettlement were given any kind of attention. The subsequent failure of resettlement efforts to restore a decent standard of living led to further complaints but it was not until the government set in motion plans to build the San Roque dam in the same area that a 'Claims Committee' was established to deal with the complaints of those affected by the previous projects. The people had had to wait forty years before an official body would even hear their claims for restitution. Since the Committee was set up, its slow pace of settling claims has been a source of further problems.²⁰⁰

The plight of the Maya Achi displaced by the World Bank-funded Chixoy dam also illustrates this problem. Although over 400 members of the affected communities were killed by government-directed forces in order to overcome their resistance to the dam in the early 1980s, it was not until 1996 that the World Bank undertook a programme to rehabilitate the affected people. Considerable problems have since been incurred in actually implementing this plan, the most serious complaint coming from the 44 families of orphaned descendants of those killed in the 1980s who have been denied land as compensation for ancestral lands lost. In all, the resettled Maya Achi claim that they have now been restituted with lands less than a third of the extent of their original cultivations and replacement housing is of a very poor quality. Compensation for the suffering they have endured over the intervening years has not been forthcoming.²⁰¹

Underlying Causes of Negative Impacts

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

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

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

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

Denial of the right to self-determination

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

Social Exclusion

One of the other most obvious reasons that the rights and interests of Indigenous Peoples and Ethnic Minorities are excluded in dam-building is because the processes of social exclusion are in any case deeply nested in the dominant society. Some of this discrimination results inheres in the prejudices and stereotypes of national society. In Rwanda and Burundi, for example, among the Hutu and Tutsi majorities it is commonly held that drinking from the same cup as a Twa (pygmy) is polluting.²⁰² In India, similarly, Hindu beliefs instill the notion of 'untouchability'.²⁰³ Such racial and ethnic prejudices are deeply rooted and widely documented.

In some countries these kinds of prejudices are institutionalised. For example in Thailand, many indigenous people lack citizenship cards and are thus not able to claim the benefits accorded Thai citizens, vote or get title to their lands.²⁰⁴ The pervasive problem caused by the lack of recognition of land rights has been noted above.²⁰⁵ Internationally, a number of governments still seek to deny that emerging international standards on Indigenous Peoples apply in their countries, among the most vociferous at the United Nations Human Rights Commission being Bangladesh, India, Malaysia, Japan and China. Other countries, like France, deny that they have minorities at all.²⁰⁶

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

of escaped slaves who re-established autonomous African societies in the forested interior, some of whom are now being moved to make way for dams, complain that they are treated even worse than Indians, whose lands are at least protected by the Constitution and through the establishment of Indian Areas, Reserves and Parks.²⁰⁷

National policies of cultural assimilation deny ethnic diversity and deny Indigenous Peoples and Ethnic Minorities the right to teach, write or even speak their own languages – as with the Kurds in Turkey for example. In Indonesia, an explicit policy of assimilating so-called 'isolated and alien peoples' (*suku suku terasing*) into the national mainstream, includes practices of forced resettlement, the dismantling of longhouses, the burning of traditional religious paraphernalia and the colonisation of Indigenous Peoples' lands with settlers from the Inner islands. The aim, noted the Minister of Transmigration in 1985, is that 'different ethnic groups will in the long run disappear because of integration . . . There will be one kind of man.'²⁰⁸

National planning and marginal voices

Since they are denied equal access to decision-making and their cultures and traditional systems are devalued, national development planning frequently excludes Indigenous Peoples' and Ethnic Minorities' voices and concerns. National water use and energy development plans tend to be centralised planning exercises based on national statistics and computer-generated predictions of population increase, industrial expansion and urban consumption patterns. Local visions, rights and priorities are often excluded from such plans as details 'to be dealt with at the implementation level' or because Indigenous Peoples and Ethnic Minorities are considered obstacles to development.²⁰⁹

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

*'The only possible place for the Krenak people to live and to re-establish our existence, to speak to our Gods, to speak to our nature, to weave our lives, is where God created us. We can no longer see the planet that we live upon as if it were a chess-board where people just move things around.'*²¹⁰

International development agencies frequently exacerbate this process by excluding consideration of Indigenous Peoples and Ethnic Minorities rights and interests in Country Assistance Strategies, Structural and Sectoral Adjustment Programmes and Sectoral lending.²¹¹

A further problem arises from the tendency, noted by many academic commentators, for planners to define problems in ways that fit the macro-economic solutions that planning agencies are equipped to provide. For example, in the course of justifying their promotion of agricultural markets in Lesotho, World Bank officials and consultants have claimed that the country has a 'subsistence-oriented society virtually untouched by modern economic development' and that 85 per cent of its inhabitants make a living as farmers. The proposed solution, not surprisingly, was to modernise the agricultural sector. In fact, as standard histories document, Lesotho has participated in regional labour, cattle and agricultural markets for more than a century, while its inhabitants derive the crucial part of their income as migrant labourers in South Africa, with only six per cent of average rural household income deriving from domestic crop production.²¹²

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

Costs, benefits and local values

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

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

'It is not easy to destroy our sacred burial grounds. It is our community faith that our beloved dead, most especially our ancestors, are resting in peace in our

*ancestral land. We believe they are with us in their spirit as we are with them in our traditional and cultural values. That is why no amount of money will constitute a just price for their sacred graves.'*²¹³

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

*'Orme dam was needed, [the Bureau of Reclamation] believed, to regulate and store water, generate hydropower and protect Phoenix from floods. The Yavapai saw things differently. They did not understand why they should bear the costs of others' mistakes; of building houses in the floodplain; of growing thirsty cotton in the desert; of stopping rivers so that Phoenix could grow its unplanned, ugly sprawl and residents could keep watering into oblivion the desert that first drew them there. Nor did the Yavapai believe that it was their right to sell the land, the last bit linking them to their ancestors, land they believed was sacred.'*²¹⁴

Although they did not use the term, the Yavapai viewed land, in the words of Espeland, as 'an incommensurate value, and money and other land, regardless of the amount could not capture its value or compensate for its loss.' As one teenager put it: 'If we took the money, we could not be ourselves . . . and we could not live with ourselves.'²¹⁵ The Yavapai, however, have difficulty in even explaining to supporters of the Orme Dam why their land was, in effect, incommensurable. There was simply no language in which they could express their feelings. Analogies — for example, likening the sale of their land to the sale of their children — were 'often misunderstood . . . as sarcasm or exaggeration', and were rejected by Orme supporters as inappropriate: 'land could not . . . be valued as children . . . and it was not unique in ways that precluded it being priced.'²¹⁶

Unsurprisingly, the Yavapai's refusal to price their land undermined the entire rationality of the Bureau of Reclamation's cost-benefit studies. Whilst, for officials of the Bureau of Reclamation, such cost-benefit analysis and contingent valuation were means of framing negotiations over acceptable terms for building the dam, to the Yavapai,

they were an affront — and one, moreover, that distracted people "from the real and relatively straightforward stakes of the decision." As one elder expressed it: 'White men like to count things that aren't there. We have a way of life that will be destroyed if that dam comes through. Why don't they just say that?'²¹⁷

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

*'No matter how well-intentioned, the Australian Resource Assessment Commission might have been in asking how much people would be willing to pay to stop the mining in the area and preserve the conservation zone, the question is inappropriate. To approach the issue through CBA — in particular to insist that there must be some price people would be willing to pay to forgo a good to which they are committed . . . — is . . . to abandon all neutrality and to attempt to corrupt the relationships constitutive of a culture.'*²¹⁸

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

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

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

'The philosophy of the indigenous peoples of the Western hemisphere has grown from a relationship to the land that extends back thousands of years... This philosophy is profoundly different from the predominant economic and geopolitical ideology which governs the practices of the major industrial powers and the operations of transnational corporations. Its chief characteristic is a great love and respect for the sacred quality of the land which has given birth to and nourished the cultures of indigenous peoples. These peoples are the guardians of their lands which, over the centuries, have become

*inextricably bound up with their culture, their identity and survival. Without the land bases, their cultures will not survive.'*²¹⁹

In the case of the Volta Dam, for example, the resettled were incorrectly referred to as subsistence farmers, with low levels of productivity which contributed little to the national development effort. As for their land, 94 per cent was considered to be either unoccupied or unsuitable for agriculture. Defined in this way, the 'idea emerged that by virtue of their backwardness, the resettled deserved their fate.' In fact, some 80,000 people lived in the affected area and their agriculture was far from "subsistence".²²⁰ This is not a problem that belongs to the past. To justify the claim that the Sardar Sarovar Project in India would bring water to villages without water, for example, the World Bank inflated the number of villages that would, in theory, benefit from the project, including inventing villages that do not exist.²²¹

In effect, cost-benefit analysis does more than force the valuation of what cannot be valued. It depoliticises the debate over dams and water policy — in ways that further marginalise already marginalised people within society. Indigenous Peoples and Ethnic Minorities, whose values may differ considerably from the mainstream, are in a particularly vulnerable position in this regard.²²²

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

For example, in the light of the Crees' unfortunate experience with mercury contamination following the La Grande developments, the environmental assessment regime set up for Hydro-Québec's proposed Great Whale (Grand Baleine) project went to great lengths to be complete. *Guidelines*, issued by the review bodies set up by the James Bay and Northern Quebec Agreement and by the federal environmental assessment regime, called for a ground-breaking Environmental Impact Surveys (EIS) based on the principles of sustainable development, on 'the rights of local communities to determine their future and their own societal objectives,' and on:

*'respect for the right of future generations to the sustainable use of the ecosystems within the proposed project area, both for the local population and for society as a whole. This involves preserving the region's flora and fauna, maintaining the quality and capacity of ecosystems and their renewable resources, preserving unique and remarkable sites, conserving cultural diversity, and maintaining and improving the quality of life in the region.'*²²³

It was to take into account indigenous knowledge, culture and values, as well as the project's justification, based on

a detailed examination of need and alternatives.²²⁴ Externalities were to be dealt with qualitatively, avoided the pitfalls of trying to monetize impacts and reduce the problem to a simple cost-benefit analysis.²²⁵

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

'suffer[ed] from a number of major inadequacies which prevent a clear definition and prediction of the repercussions of the proposed project to the extent that it becomes extremely difficult to adequately estimate its real costs and benefits ... As submitted by the Proponent, the EIS is presently neither sufficiently complete nor adequate for the decision-making process.'²²⁶ (emphasis in original)

'Major inadequacies which affect the analysis of the impacts are: an inadequate knowledge of the human societies, an inadequate approach regarding the combined and integrated effects of the proposed project and an inadequate appreciation of the uncertainty associated with the project's impacts. ... With regard to the biophysical environment, the EIS does not recognize the existence of distinct ecosystems within the study area, their structure and function, or the processes and interrelationships which constitute ecosystem health.'²²⁷

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

'The justification of the proposed project involves, first, assessing the need for additional energy resources, and then comparing the various supply-or demand-side resources that could be developed to satisfy it. A least-cost analysis was to demonstrate that the best solution for meeting the anticipated demand growth includes the Great Whale project, not only for the demand growth scenario judged most likely, but also for other plausible scenarios. Moreover, the Proponent was to provide a comparative analysis of the externalities of the different energy resources available, on a quantitative basis, insofar as possible, or on a qualitative basis, where not possible. These analyses are not developed to a sufficient degree in the EIS to permit evaluation of whether or not the conclusions are well founded.'²²⁸

The very day after the release of this damning report, the Quebec Premier announced that the project would be shelved.²²⁹

Engineering consent

Even where it is national policy to involve affected communities in dam-building projects, the obstacles to effective participation are manifold. In the case of the Bakun dam, for example, Dayak peoples were provided minimal information about the project, access to the Environmental Impact Assessment was denied and when they objected to the proposed resettlement plan they were denounced as being 'anti-development'. Dayak leaders had their passports taken away to prevent them travelling overseas to speak out against the project and NGOs supporting the indigenous communities suffered harassment and repression. Lawyers from Peninsula Malaysia acting for the affected people were denied access to the State. Communities were threatened with withdrawal of State benefits and services if they persisted with their opposition. They were obliged to sign contracts accepting the relocation, in order to get new housing and land in the resettlement area. Dissent was quashed.²³⁰

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

'... it would be most difficult to avoid the conclusion that the Aboriginal parties ... were repeatedly subjected to inappropriate, unlawful coercion or duress. ... These actions were incompatible with the fiduciary obligations of both governments and substantially affected the fundamental terms of the "agreement" reached' (see also Cree Statement).²³¹

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

'government presents its use of customary meetings (kotla), at which local people discuss vital issues with their leaders, as a form of local participation. In connection with the Southern Okavango Integrated Water Development Project, however, such meetings were used more to inform local people of the government's intentions, and to solicit their reactions to those intentions, than to actually involve them in the planning process.'²³³

The WCD joint consultation on 'Dams, Indigenous Peoples and Ethnic Minorities' held in Geneva in 1999, heard a number of complaints about Government manipulation of the consultation process to try to engineer the result that they sought. A spokesperson for the Himba pastoralists, threatened with the loss of core parts of their grazing lands to the Epupa Dam, noted how the government was attempting to gerrymander administrative and electoral boundaries in the area and thus overcome resistance. In 1997, heavily armed Namibian police attempted to prevent the Himba speaking to their lawyers and only after the latter obtained a court order from the High Court were the people able to meet their legal advisers again without fear of harassment and intimidation. Similarly, the meeting heard how in Manitoba in Canada, government agencies had changed the rules for voting in communities to ensure consent to rehabilitation packages linked to the Churchill-Nelson River Diversion Project. Pressure has likewise been placed on the Pewenche people to accede to the Ralco dam on the Bio Bio river in Chile. The Ralco dam is now under construction even though the project still lacks the authorisation of the government agency responsible for indigenous affairs. Two [of] directors of the agency have been threatened with dismissal since they oppose the resettlement plan.²³⁴

The Pressure to Lend

The problem of abbreviated participatory procedures is very widespread. It is exacerbated by deep-seated institutional pressures on the staff of multilateral development banks to 'deliver' projects. As a 1992 report by the World Bank's Portfolio Management Task Force, led by Willi Wapenhams, makes clear, the Bank's 'pervasive preoccupation with new lending' takes precedence over all other considerations.²³⁵ According to the Task Force, 'a number of current practices – with respect to career development, feedback to staff and signals from managers – militate against increased attention to project performance management.'²³⁶ In the subculture which prevails at the Bank, staff appraisals of projects tend to be perceived 'as marketing devices for securing loan approval (and achieving personal recognition)', with the result that 'little is done to ascertain the actual flow of benefits or to evaluate the sustainability of projects during their operational phrase.'²³⁷

The Bank's institutional priorities and management structures have thus encouraged staff to flout internal policy directives and borrower governments to ignore loan conditions. Unsurprisingly, the 'credibility [of loan agreements] as binding documents has suffered'²³⁸ and 'evidence of gross non-compliance [with Bank legal covenants] is overwhelming.'²³⁹ When borrowers disregard loan conditions, the typical response of Bank

management has been to look the other way or waive the relevant requirement, unless public pressure forces them to do otherwise. As Patrick Coady, an ex-Executive Director of the World Bank, has remarked: "No matter how egregious the situation, no matter how flawed the project, no matter how many policies have been violated, and no matter how clear the remedies prescribed, the Bank will go forward on its own terms."²⁴⁰

Lack of Accountability

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

This might not matter so much if the institutions themselves were in some way legally obligated to the affected communities but in fact, grievance procedures are often unwieldy or absent, opportunities for legal redress tortuous and responsible institutions remote. Enforceable contracts between dam builders and oustees, whether indigenous or not, are the exception not the rule.²⁴¹

The privacy of private financing

This problem is likely to become more, not less, acute as the financing, building and operation of dams moves to the private sector.²⁴² Already many private-sector funded projects are eschewing support from the main lending windows of agencies such as the World Bank because the environment and development standards required by the Bank are considered too onerous. Instead, companies are turning to publicly-backed Export Credit and Investment Insurance Agencies (ECAs) to guarantee their investments and thus ease the task of raising private sector financing.

Such ECAs are now financing (or considering financing) a number of major hydro projects around the world, including the San Roque Dam in the Philippines, the Three Gorges Dam in China, the Ilisu Dam in Turkey and the Maheshwar Dam in India. A major attraction for industry of ECAs is that, almost with rare exceptions – the US Export-Import (Ex-Im) Bank and the US Overseas Private Investment Corporation (OPIC) being cases in point – they have no mandatory human rights, environmental and development standards: they also have a secretive institutional culture. In Britain, for example, the

CREE STATEMENT TO THE WORLD COMMISSION ON DAMS

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

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

opening the way to an integrated Environmental Assessment process.

We also maintain that Hydro-Québec's recent behaviour demonstrates that it still considers it proper to attempt to engineer the consent it claims to require. Hydro-Québec has chosen to negotiate directly with local Band Councils, rather than with the Grand Council of the Crees. This fit nicely with the policy of the Quebec Government to deal with communities and not with the larger political organizations of aboriginal peoples in their dealings with them. However, it is not up to Hydro-Québec or to the Province of Quebec to determine the modalities by which the Cree Nation will give or withhold its consent for a major hydro project. The Cree Nation has elected the Grand Council by universal suffrage and mandated it to represent them in precisely these situations. Hydro-Québec's unilateral decision to negotiate with local Band Councils rather than with the Grand Council itself is thus a baldfaced attempt to engineer consent for new megaprojects on Cree territory.

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

In 1999 the Cree people spoke, in the community elections. Three chiefs who had been vocal advocates of participating in the discussions with Hydro-Québec were replaced by outspoken critics of the HQ proposals. Two others who had promoted Hydro-Québec's community-by-community approach were also voted out. The Hydro-Quebec strategy of divide and conquer had failed.²³²

UK Export Credits Guarantees Department ECDG is required under the 1991 Export and Investment Guarantee Act to take account of all economic and political factors that might adversely influence a loan. It has no legal obligation, however, to consider the environmental impacts of its investments or the contribution they will make to development; no obligation to ensure that all its projects comply with a set of mandatory human rights, environmental and development guidelines; and no obligation to screen out projects with adverse social and environmental impacts.

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

The ECGD is not required to follow even the World Bank's (weak) guidelines for screening and monitoring projects, nor the guidelines recommended by the Development Assistance Committee of the OECD, nor the guidelines drawn up by the OECD to influence the conduct of multinational companies. Although, in some instances (and generally only as a result of public pressure), environmental and social factors are taken into account in this underwriting process, the risks assessed are those posed to the financial and political viability of the project, not the risks that the project poses to the environment and to people.²⁴³

Social Engineering for Development

Although, from a neoclassical economic perspective, conventional top-down development has delivered measurable gains for many groups,²⁴⁴ such gains should be seen in a wider context. The gains made by some groups are frequently to the cost or exclusion of others.

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

*'Economic development of an underdeveloped people by themselves is not compatible with the maintenance of their traditional customs and mores. A break with the latter is prerequisite to economic progress. What is needed is a revolution in the totality of social, cultural and religious institutions and habits, and thus in their psychological attitude, their philosophy and way of life. What is, therefore, required amounts in reality to social disorganisation. Unhappiness and discontentment in the sense of wanting more than is obtainable at any moment is to be generated. The suffering and dislocation that may be caused in the process may be objectionable, but it appears to be the price that has to be paid for economic development: the condition of economic progress.'*²⁴⁵

Likewise, Etounga-Manguelle, ex-staffer of the African Development Bank, believes fundamental changes in African cultures are required before the continent can benefit from modern development planning.²⁴⁶ A similar view has been expressed more recently in a paper prepared by Kenichi Ohno of Saitama and Tsukuba Universities, Japan, for input into the World Bank's 1997 World Development Report. The paper, which 'summar[ises] current discussions taking place among official and academic researchers responsible for Japanese aid policy', argues that 'market thinking' is 'not ubiquitous in human society' and must therefore be instilled if it is to be practised. The process of economic development - or, as Ohno terms it, "systematic transition" - is thus

*'a deliberate attempt, perhaps only once in the history of any country, to implant a system from without that does not arise automatically from within the existing society.'*²⁴⁷

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

Dam-building and equity

Dam-based development strategies have contributed to this multi-faceted process of exclusion in a number of significant ways. For example, the financial packages, engineering expertise and organisational capacity required to construct large dams has privileged certain types of expertise and centralised institutional power over others. As a result, many alternative approaches to water development - including a range of water harvesting and irrigation technologies developed by indigenous peoples and ethnic minorities - have been overlooked, downplayed or dismissed by planners. In India, for example, many villagers now face water shortages because their local village tanks have fallen into disrepair, in part because state bureaucracies have preferred - for institutional

reasons - to fund centrally-managed water supply systems (using large reservoirs) in preference to funding the upkeep of tanks.²⁴⁸ In the same way, the emphasis on engineering and economic considerations in dam building has diverted attention away from environmental and social considerations – whereas they should be treated as fundamental parts of dam planning equal to technical design.²⁴⁹

Dam-based development strategies have also played a significant role in restructuring food production, consumption and distribution patterns - for example, through promoting a shift from production for local consumption and marketing to production for export in order to earn the foreign exchange to pay for irrigation schemes.²⁵⁰

In addition, the large sums of money involved in building individual dam projects, coupled to the development of elite patronage networks associated with the awarding of contracts, has not only encouraged corrupt practices but has reinforced political structures that privilege certain classes, ethnic groups and commercial interest over others.²⁵¹

III Towards 'Best Practice'

*'The Committee calls in particular upon States parties to...ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.'*²⁵²

Affected communities: the importance of organising

The ability of indigenous peoples and ethnic minorities to exercise control over the decision-making processes that affect their lives and livelihoods is key to the successful outcome of any development projects that might affect them. In the case of water projects, both the literature and submissions of stakeholders make it clear that projects "succeed" only where affected communities have been able to determine their design, operation and implementation. A case in point is the Baliraja Dam in India: as Enakshi Thukral points out, the dam, which involved no resettlement and was just 4.5 metres high, worked precisely because it was 'the result of the people's own initiative'. It was 'their solution to their problem'.²⁵³

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

Building new institutions based on cultural traditions may be a key part of successful organising. For example, opposition to the Chico dams in the Philippines was organised around the revival of the Kalinga institution of

the *bodong* or 'peace pact' by which, in the past, warring communities would establish peaceful relations to allow trade with the lowlands²⁵⁴. To confront the dam, the *bodong* was extended over a very wide area, even beyond its original extent, so that it came to embrace a major part of the central Cordillera of the island of Luzon.²⁵⁵

Nahua Indians Marcelino Diaz de Jesus and Pedro de Jesus Alejandro of Mexico recount similar lessons from their successful struggle against the San Juan Totelcingo Dam on the Upper Balsas river. The first the Nahua learned of the dam was when, in 1990, they noticed surveyors crossing their lands and fixing markers against the expected flood levels of the impoundment. At the time the Nahua were not organised and Diaz and de Jesus believe that, were it not for the heightened awareness about indigenous rights in the continent in the years preceding the celebrations of 500 years since Colon's 'discovery' of the Americas, they might never have had the courage to oppose the dam. The approach of this event, the increased public sensitivity to environmental issues preceding the Rio Summit and the Nahua's discovery of international standards recognising their rights, notably ILO Convention 169, emboldened them to oppose the government's plans. By dint of creating a Council of Nahua Peoples of the Upper Balsas, through letter writing, lobbying, demonstrations, media work and a historic march to the capital city in defence of their rights, they were able to swing public sentiment in their favour and oblige the President to cancel the dam.²⁵⁶

Moreover, the record clearly shows that where resettlement is accepted by a community, strong community organisation is key to obtaining the best possible terms and to ensuring that rights guaranteed to indigenous groups and ethnic minorities under national and international legislation are respected. Using compensation monies to build up strong indigenous organisations is likewise considered part of 'best practice' by Hydro-Quebec.²⁵⁷

Political pressure – rooted in strong community organising - has also proved the key to opening up discussions on reparations for damage done by past dams. In Madhya Pradesh, for example, the authorities are now considering reparations for oustees of the Bargi Dam. However, as Shripad Dharmadhikary of the Narmada Bachao Andolan notes, this has only been achieved through four years of protest by oustees.²⁵⁸ Others note that where consultation has taken place, it is generally as a result of affected communities demanding that their voices be heard.²⁵⁹

Likewise, in the US, political organising – including direct actions and legal cases – has been key to Native Americans regaining their full water rights. In the early years, tribal acquiescence to dams was not hard to get. Unaware of their legal rights and untrained to use the

courts, tribal elders felt unable to oppose government pressure. For example, tribal elders felt forced into agreeing to their resettlement to make way for Garrison Dam on the Missouri. The reservoir displaced 80% of the Mandan, Hidatsa and Arika peoples and has been blamed for the consequent high levels of unemployment among those relocated.²⁶⁰ By the 1970s, however, peoples like the Yavapai were far better aware of their rights and were able to hold their ground.²⁶¹

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

*'This social ferment [of the early 1970s] coincided with the maturation of the first generation of American Indian political strategists and attorneys ready, willing and able to engage in a sort of policy making and juridical 'ju jitsu' with the 'rules of the game' enunciated by Congress and the federal courts. Not just Treaty rights, but statutes like the Clean Water Act, Resource Conservation and Recovery Act and the Safe Water Drinking Act were therefore brought increasingly to bear in litigation and negotiation of indigenous water rights. Similarly, beginning in 1977, Native Americans began to gain increasing access to international forums such as the United Nations, through which new and sometimes effective sorts of pressure can be brought to bear upon the US. All of this added up, between 1965 and 1980, to a radical alteration of the context in which indigenous water rights were pursued.'*²⁶²

Indian groups in the US are now reasserting their rights and seeking compensation in the courts (see above). Indeed, the struggle over water rights has been described as "the last chapter in the Indian wars."²⁶³ As Madonna Thunderhawk, a Hunkpapa Lakota AIM member, one of the group that founded Women of All Red Nations, and a long-time water rights activist on the Standing Rock Reservation in North Dakota, puts it:

*'Water is the life blood, the key to the whole thing. Without water, our land rights struggles – even if we were to win back every square inch of our unceded lands – would be meaningless. With the water which is ours by aboriginal right, by treaty right, and by simple moral right, we Indians can recover our self-sufficiency and our self-determination. Without that water, we are condemned to perpetual poverty, erosion of our land base, our culture, our population itself. If we do not recover our water rights, we are dooming ourselves to extinction. It's that simple. And so I say that the very front line of the Indian liberation struggle, at least in the plains and desert regions, is the battle for control over our water.'*²⁶⁴

Lessons learned

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

- Early involvement in project planning and evaluation of options. Experience suggests that the earlier in the project cycle people engage with developers, the better chances they have of securing a favourable outcome, be it stopping the dam, relocating or redesigning it or ensuring acceptable compensation.
- Get informed. Early and then sustained access to all official or company documents relating to planned projects is essential for well-judged interventions. Some countries and many international development agencies have freedom of information acts or policies, which can be appealed to if documents are not forthcoming.
- Establish strong autonomous institutions. Organised and mobilised communities with widely accepted and open decision-making processes have proven far better able to deal with dam-building projects than divided ones.
- Secure legal standing for representative institutions. In many countries, customary institutions are not legally recognised. Organisation and registration using existing laws may be crucial before the people concerned is accepted in negotiations.
- Register land ownership and customary use. Even in countries which recognise indigenous rights to lands, processes of land registration often lag far behind. Securing documentation of rights can be crucial to strengthening community rights in negotiations.
- Document customary usage, historical occupation and current land use. Establishing independent sources of information can be crucial in court cases and negotiations. Increasingly Indigenous Peoples are making maps of their land use and historical occupation, using easy-to-use GPS and GIS technologies to demonstrate their customary ties to their territories
- Use the law. Because so many dams and resettlement schemes are imposed without due regard to legal process, recourse to the courts has proved a powerful tool for many affected peoples. Of course, where national laws are weak and the judiciary not independent, this avenue may be closed.
- Use international standards and procedures. International law and multilateral development agencies not only have standards regarding human rights and resettlement but also have procedures to respond to violations and grievances. Filing complaints with the ILO and the World Bank's Inspection Panel, for example, while frustratingly slow and cumbersome, has resulted in improvements in some cases.
- Insist on legally enforceable contracts with implementing agencies. Indigenous Peoples have long demanded

that developers (governmental and private) enter into binding agreements with them, enforceable through the courts, prior to commencing projects. Marked improvement in the way dam-builders now deal with Indigenous Peoples in Canada has resulted from this practice.

- Involvement in preparation, environmental and social impact assessments, appraisal, monitoring & evaluation. Integral involvement of representatives of the affected communities in the full project cycle improves communications, allows the earlier identification of potential problems and implementation errors, and facilitates the identification of mutually acceptable solutions.
- Share experiences. Sharing experiences between Indigenous Peoples in different areas, countries or even continents through meetings, workshops, community exchanges has proved a valuable way for Indigenous Peoples to learn from each other and strengthen their resolve to confront their problems.

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

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

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

- Ensure the affected people maintain the initiative. Although cultural traditions of advocacy and support work vary widely around the globe, ensuring a democratic and mutually accountable relationship between NGOs and affected groups is vital to maintaining trust and good communications.
- Maintain a long-term engagement. Staff turnover in NGOs is high and the focus of their work is often driven by donor fashions. Dealing with large dams, however, has proved a very long-term exercise. NGOs are most effective where they are able to maintain their commitment to support communities over decades. If they do so they become important reservoirs of experience and often evolve longer institutional memories than official development agencies making them potentially valuable partners in development planning.

- Build up detailed documentation and information. NGOs have proven especially valuable allies to Indigenous Peoples where their wider networks and greater access to modern communications give them access to information about laws, likely impacts, comparable experiences and effective negotiating tactics.
- Open sustained, high-level media campaigns have also proved important for ensuring transparency and accountability where government officials and project staff have proved reluctant to deal fairly with the affected peoples.

Private Sector: sharing power

The move to private sector development of dams is relatively new and only a few of the longer established companies have taken any initiative to address the issues raised in this paper. Indeed, many of the new companies developing dam projects have no previous experience in building or operating dams. For example, S. Kumars Power Corporation Limited, the company developing the Maheshwar Dam in India, is a textile company with no previous experience of dam building.²⁶⁵ Similarly the huge consortium, Bakun Hydroelectric Corporation, formed to build the Bakun dam in the Malaysian State of Sarawak and which was prepared for flotation on the Kuala Lumpur Stock Exchange in 1996, had no prior dam building experience.²⁶⁶ Both projects have been highly controversial and have had a very low level of participation of the affected peoples. Despite community objections and resistance, construction and involuntary resettlement schemes have been pushed through.

Companies and professional bodies with a greater experience of building dams have, however, begun to evolve clear standards and policies, which suggest greater sensitivity to the needs and views of indigenous peoples and ethnic minorities.²⁶⁷ The International Finance Corporation, the private sector financing arm of the World Bank notes that:

*'Public consultation plays a critical role in raising awareness of a project's impacts and gaining agreement on management and technical approaches in order to maximise benefits and reduce negative consequences. Furthermore, consulting and collaborating with the public makes good business sense. Public consultation can lead to reduced financial risk (from delays, legal disputes, and negative publicity), direct cost savings, increased market share (though good public image), and enhanced social benefits to local communities.'*²⁶⁸

Leading dam builders go further. For example, in its 1997 Position Paper on Dams and the Environment, ICOLD - the

International Commission on Large Dams, a professional body bringing together many major dam-building interests - states:

'- Involuntary resettlement must be handled with special care, managerial skill and political concern based on comprehensive social research, and sound planning for implementation. The associated costs must be included in the comparative economic analyses of alternative projects, but should be managed independently to make sure that the affected population will be properly compensated. For the population involved, resettlement must result in a clear improvement of their living standard, because the people directly affected by a project should always be the first to benefit instead of suffering for the benefit of others [For that reason, under a law dating back to 1916, communities in Switzerland are entitled to considerable annual payments and quotas of free energy for granting the rights to hydropower development on their territory]. Special care must be given to vulnerable ethnic groups.

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

Such concerted action requires continuous, comprehensive and objective information on the project to be given to governmental authorities, the media, local action committees or other non-governmental organizations, and above all to the directly or indirectly affected people and their representatives. In this information transfer from planners to the public, dam engineers must contribute, through their professional expertise, to a clear understanding and dispassionate discussion based on facts and not on irrational ideas of the positive and negative aspects of a project and its possible alternatives. Dam promoters must act as mediators and educators with the aim of becoming good neighbours and not intruders.²⁶⁹

Likewise, as noted above, the International Hydropower Association has also endorsed the principle of prior and informed consent for future dam-building. Hydro-Quebec, strictly speaking a state-owned for-profit utility, has perhaps gone furthest in elaborating these principles in

detail and seeking to put them into practice. As the company notes in its submission to this review, the way it deals with Indigenous Peoples has transformed in the past forty years, 'from ignoring such issues in the 1950s and 1960s to proposals today of full partnership with local communities...' Its first major project affecting Indigenous Peoples, the James Bay project, had ignored Indigenous land claims and led to lengthy litigation, eventually resulting in the James Bay and Northern Quebec Agreement between seven signatories including the Federal and Quebec Governments and the Cree and Inuit nations. The settlement secured financial benefits for the Cree and Inuit, ownership title to defined areas of land, and future hunting, trapping and fishing rights to a much wider area, in exchange for extinguishing their ancestral land rights. The company believes that the Quebec Cree have benefited overall from the project and points to a report of the Royal Commission on Aboriginal People which compares their current situation [very] favourably with the Ontario Cree to the west.²⁷⁰ Yet, as noted above, the James Bay Cree themselves still have major concerns about the impact of the James Bay complex and the way proposed projects are being negotiated.

Current Hydro-Quebec policy stresses that, for projects to go ahead, they should be environmentally acceptable, **socially accepted** and profitable. As the company points out, 'This is a major shift inasmuch as it clearly puts environmental and social considerations on an equal footing with economic ones'.²⁷¹

The acceptance of the principle of prior and informed consent marks a turning point in discussions between Indigenous Peoples and Ethnic Minorities and the developers of large dams. A crucial issue for affected communities that then needs clarification and acceptance is the means by which consent is expressed. In the case of Hydro-Quebec, the company notes that agreements are negotiated between the company and Band Councils which are then subject to rejection or acceptance, sometimes by referendum, of the entire community. The exact modalities for negotiation and reaching agreement vary from case to case and depend on various factors, including the political organisation of the peoples concerned. The company emphasises the importance of capacity-building of indigenous institutions for there to be a sense of partnership and trust in negotiations. These negotiations between the communities and the company include seeking agreements on; mechanisms for the joint design and implementation of mitigation and compensation measures; compensation for negative impacts such as loss of hunting and fishing opportunities; economic development programmes and monitoring arrangements. In addition the company allocates a fund of 1-2% of capital investment in the project towards community development funds. In future, Hydro-Quebec hopes to go further

and develop options that will allow direct community participation in social and environmental assessments – with joint EIAs being aspired to – and that will result in the company sharing ownership and revenues with affected communities where feasible.²⁷² However, as noted above, the Grand Council of the Crees of Quebec argues that the company should have been negotiating directly with them as the political body elected by the Cree people rather than piecemeal with the Band Councils.²⁷³

Another project that Hydro-Quebec has negotiated with Indigenous Peoples is the Sainte Margarine 3 Hydroelectric Development, which gained approval from the Quebec Government in 1994 subject to the company reaching a negotiated agreement with the Montagnais (Innu). The project has divided the affected Innu people, with the Band Council only securing approval, through a referendum of the two communities, by a very narrow majority of 52%/48%.²⁷⁴ As Hydro-Quebec itself admits “the referendum temporarily amplified divisions in the community: between Uashat and Malietenam [the two villages], and between the Traditionalists and Others”.²⁷⁵ These divisions were mostly due to [a] proposed river diversions which are considered essential for the profitability of the project but which will affect one community in particular, Malietenam. The river diversions were not authorised by the government. Hydro-Quebec has decided it will only go ahead with the diversions if and when local consent and government approval are secured.²⁷⁶ Meanwhile the rest of the project is under construction and due for completion in 2001. The project can be modified to incorporate the river diversions once and if they get the go-ahead.²⁷⁷

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

‘In countries where only one or limited sites are available for hydropower development and water supply, where needs are pressing, where electricity production alternatives are few, the approach of local consent to new projects takes another dimension. In some cases, giving “veto” power to local communities on projects that may provide essential public services to millions raises a fundamental ethical dilemma: the balance between minority and majority rights. Such “veto” power may even backfire against local communities raising resentment and social tensions as the majority may feel hostage to the decisions of a few. This is not to say that projects of national importance should be rammed

through at the expense of local communities – we have seen enough of such justifications around the world over the last generations, with disastrous consequences on local communities and the environment alike. We simply are pointing out a difficult ethical issue which projects might raise in less developed economies.’²⁷⁸

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

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

So our Southern partners argue that dam projects in the South should fulfill the same basic conditions as dams in the North, and I agree with them.²⁷⁹

International development agencies: the need for accountability

Resettlement policies related to large dams were first adopted by the United Nations Food and Agriculture Organisation in 1971.²⁸⁰ As mentioned above, a more detailed policy on Involuntary Resettlement was adopted by the World Bank in 1980 and revised in 1990. The 1990 policy was endorsed by the Development Assistance Committee of the Organisation for Economic Cooperation and Development in 1993, implying acceptance of these same standards by the other main multilateral and bilateral development agencies.

The World Bank’s current resettlement policy is at odds with Indigenous Peoples’ demands in a number of respects. The first and most obvious is that it unquestioningly accepts the doctrine of eminent domain and thus accepts the principle that international development assistance can legitimately be given to projects that entail obligatory expropriation and forced relocation. Since the acceptance of resettlement by local communities is not required, such a policy provides little incentive to either borrower government or Bank project

officers to enter into meaningful negotiations with local communities or seek alternative, more acceptable development options. Casting the local communities into the role of victims and passive beneficiaries contributes substantially to project failure.

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

MDB examples of 'Best Practice'

Also worrying for Indigenous Peoples and Ethnic Minorities are the apparently low standards of 'Best Practice' that the multilateral agencies seem to have accepted. The problems with the World Bank's positive assessment of the Khao Laem project have been noted above. For its part the Asian Development Bank has stated that the resettlement of Iban Dayaks to make way for the Batang Ai dam in Sarawak was an example of a 'culturally sensitive and economically sound programme'; because 'the policies and plans to resettle the indigenous peoples affected by the Batang Ai Hydropower Project in Malaysia were carefully investigated and prepared.'²⁸¹ Other assessments are more sanguine.

The project caused the displacement of some 2,800 Iban from 26 longhouses. A study carried out by the Sarawak Museum before the project began showed that 98% of the Iban still practised their traditional religion and maintained a strong attachment to their traditional customs, beliefs and traditional aspects of longhouse living. Most of the people felt their standard of living had improved in recent years and that they already had sufficient income from rubber and pepper that they cultivated in the old swiddens. Many feared that the gods would punish them with natural disasters if they allowed the flooding of their sacred land. Many gave as a condition for accepting their removal that they not be resettled on a land scheme, that they be assured the possibility of growing rice and of maintaining their mixed economy of hunting and farming.²⁸² Eventually the Iban were persuaded to move in exchange for promises of free housing, free water, free electricity and 11 acres of land per family.

The reality has proved a bitter experience. Not only were they resettled on a Government land scheme, but

they were forced to change their way of life radically. Rice cultivation proved impossible on the terraces prepared for them and they were obliged to set up as small-holders on a plantation scheme. Incomes fell to the point that according to one study 60% of households were below the State poverty line, with the majority of respondents reporting that lack of land was their main problem.²⁸³

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

To get around this problem, the solution that Indigenous Peoples have long advocated is for there to be tripartite agreements between the MDBs, Governments and Indigenous Peoples, thus ensuring that the affected peoples are directly involved in project planning, implementation and monitoring. Indigenous Peoples likewise have insisted that they should have the right to accept or reject proposed developments in their territories.²⁸⁴

Inter-American Development Bank: informed consent

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

- there was broad participation of those affected mediated through their local representative institutions
- compensation of land for land was offered
- resettlement plans and schedules were well linked to the construction programme
- resettlement was followed up with broader economic and social development initiatives.²⁸⁵

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

since. Finally, and building on the lessons learned in the intervening time,²⁸⁶ the IDB adopted a public policy on involuntary resettlement in 1998.²⁸⁷

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

- informed consent by the affected people
- their extensive participation in the design of the compensation and resettlement plan
- full recognition of customary rights
- fair compensation including special measures to compensate for loss of cultural property (such as burial or sacred sites) and to minimize disruptions to existing patterns of socio-cultural organisation
- compensation with land for land lost where required
- indigenous communities be better off after removal.²⁸⁸

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

Although the African Development Bank (AfDB) has yet to accept the principle of prior and informed consent, its review of its financing of dam-building projects in Africa reveal that project performance improves if resettlement programmes are first discussed and negotiated with the local communities. Where, as in the case of the Lupoholo-Ezulwini project, the resettlement 'plan has taken into account all the social and cultural specifications of the populations, for example by transferring the graves, and meeting beforehand, all the costs relating thereto, **to the satisfaction of the traditional chiefs**', the AfDB considers that a successful resettlement has resulted.²⁸⁹ In

general, however, resettlement performance of AfDB-funded projects appears to have been inadequate, one cause being that 'the frequency and quality of the Bank's supervision missions have proved to be largely insufficient' and as a result the AfDB's project preparation and appraisal guidelines have not been adhered to.²⁹⁰

Uncertain progress at the World Bank

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

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

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

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

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

- Clearer stipulations are needed to ensure the involvement of local communities in baseline surveys
- Clearer provisions are needed to secure the interests of customary rights holders
- Explicit provisions are required on the need for compensation for non-monetised economic activities, unquantifiable livelihood functions and cultural losses

- Stronger measures are required to ensure the involvement of project affected people in Monitoring and Evaluation
- Enforceable mechanisms are required for the redress of grievances
- A proposed advisory panel should include independent members.

It remains to be seen how far the World Bank will go in responding to these suggestions. However, the indications are that although the World Bank strongly favour processes that involve disclosure of information about proposed projects and effective public consultations, including special measures to address the concerns of Indigenous Peoples and other vulnerable groups, it feels unable to accept the principle of prior and informed consent.²⁹¹

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

*'It is incumbent on international institutions to recognize that in adopting, applying and supervising their policies they are doing more than making rules for themselves: they are participating in an international normative process.'*²⁹²

Governments

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

section 1, this study has already examined some of the 'best practice' examples set by governments towards indigenous peoples and ethnic minorities. Pluralist policies, which devolve power to local communities and grant autonomy to Indigenous Peoples are increasingly finding favour in Latin America and in some Asian countries. Legislation recognising indigenous peoples' rights to their lands and territories has begun to be adopted and applied in South America and the Philippines. An important step forward is being made by those countries which have ratified ILO Convention # 169. In addition some countries have begun to modify the principle of eminent domain, by requiring the consent of local communities or indigenous peoples before development plans get government approval (see p. 14-15 above).

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

IV. Conclusions and Recommendations:

Conclusions:

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

Distinctive status and rights

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

Serious Impacts

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

Procedural failures

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

Underlying problems

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

- Denial of the right to self-determination.
- Social exclusion including through official policies and institutions and prevalent discrimination in national societies.
- Lack of consideration of Indigenous Peoples and Ethnic Minorities in regional and national energy and water policies and plans.
- The inability of Cost-Benefit Analyses to capture Indigenous Peoples' and Ethnic Minorities' priorities and values.
- The focus of private companies, funders and government agencies on large-scale projects to the exclusion of alternatives.
- The engineering of consent and the denial of voices of opposition
- The pressure to lend in international financial institutions which results in over-rapid decision-making, lack of consideration of alternatives, abbrevi-

ated participation and failures to apply agreed procedures.

- The lack of accountability of dam builders, operators, contractors, consultants and funders to the affected peoples. This tendency is likely to be exacerbated by moves to increasingly privatise the dam building industry.
- The acceptance among macro-economic planners of the need for social engineering to promote modern development processes.

Emerging 'Best Practice'

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

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

Although, Multilateral Development Banks (MDBs) led the way in the 1980s in establishing standards for resettlement and rehabilitation, their subsequent failure to adhere to these standards has been all too well documented. A worrying finding of this review is that some MDBs seem to be weakening rather than strengthening their standards. They also seem reluctant to reform the incentive structures for staff so that they have

the time, resources and inclination to apply these standards. In order to sustain the general movement towards consensus on 'best practice', it is urgent that MDBs embrace the principles of free, prior and informed consent, compensation with land for land and that relocatees be better off after removal.

Recommendations

The WCD consultation on the theme of '*Dams, Indigenous Peoples and Ethnic Minorities*', held in the World Council of Churches in Geneva on 31 July and 1 August 1999, provided a great deal of additional material supporting these main conclusions.²⁹³ Although time did not allow the elaboration of detailed recommendations the following key principles and recommended practices emerged from the discussions for consideration by the World Commission on Dams.

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

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

The Fundamental Importance of Territories

- Many speakers stressed the fundamental significance to indigenous peoples and ethnic minorities of their territories. As a spokesperson for the Saami put it: '*Indigenous Peoples have a right to a past, a right to a presence and a right to a future*'. Their right to the past is bound up with their attachment to their territories. '*The land, the forests and the rivers are our mothers*' as another speaker noted. Their right to a presence, implies a right to a voice in decision-making and to have a secure place

on the earth. Moreover, in looking to the future, '*as members of indigenous peoples we don't have the right to sell out our cultural existence because of the coming generations*'.

- What Indigenous Peoples and Ethnic Minorities seek is to become active protagonists of their own development and no longer to be cast into the roles of passive recipients of aid or victims of development.

Rethinking the doctrine of eminent domain

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

Free, Prior and Informed Consent

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

Respect for Human Rights

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

Early Involvement in the Planning Cycle

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

Negotiated Settlements

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

Joint Implementation and Monitoring

- The peoples concerned should be integrally involved in joint environmental and social impact assessments. Social impact assessments should be given the same status and importance as environmental impact assessments.
- A fundamental principle of mutually agreed resettlement and rehabilitation plans must be compensation with lands, territories and resources equal in quality, size and legal status to those lost.

- There should be full compensation for any loss or injury.
- Remedial measures should be incorporated to cushion social, cultural and institutional disruption.
- The peoples concerned should be jointly involved in project implementation and in Monitoring and Evaluation.
- Special provisions must be made to ensure that the interests of women are taken into account.
- Where requested settlements should include fair sharing of benefits or options for joint ownership and profit sharing.

Restitution for Past Loss

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

Enforcement of Standards

- The need for enforceable standards was emphasised. The suggestion was made that the World Commission on Dams should recommend the establishment of some kind of international 'Ombudsman' or 'Tribunal' to oversee the future implementation of such standards.
- One participant suggested that, in the absence of clear standards and processes of enforcement, there should be a moratorium on the building of large dams.
- The WCD should refer to the 'Guidelines relating to transnational corporations and indigenous peoples submitted by the Indigenous Preparatory Meeting' to the Working Group on Indigenous Population in 1997.²⁹⁴

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

Notes

¹ This paper was to have been written jointly with Andrew Gray, of the Forest Peoples Programme, who was killed in an air accident in May 1999. We profoundly lament his loss. I would like to offer my thanks to Fergus MacKay, Garth Nettheim and Tony Simpson for help with legal interpretations and to Maurizio Ferrari, Bill Fisher, Real Courcelles, Josef Milewski, Robert Goodland, Maninder Gill, Sandy Davis, Joji Carino, Anne Deruyterre, Ted Moses, Brian Craik, Andy Orkin and Ted Scudder for comments on earlier drafts. I would also like to thank *The Cornerhouse* for the exceptional help provided in chasing up sources and information.

² Cited in Bennett, Butt-Colson and Wavell 1978:9

³ The findings and conclusions of this paper derive from an extensive but not exhaustive review of the available literature, the results of an email questionnaire sent out to several hundred individuals known to be involved in the issues of Indigenous Peoples, Ethnic Minorities and/or Dams, and telephone interviews with a number of legal experts, indigenous spokespersons and NGOs. The consultation embraced a wide range of actors, including industry, international development agencies, environment and development NGOs and representatives of Indigenous Peoples and Ethnic Minorities. The paper also draws on the findings of the WCD's joint consultation on 'Dams, Indigenous Peoples and Ethnic Minorities', held in Geneva on 31 July – 1 August 1999. In addition, the draft paper was presented and discussed at two seminars held in Washington DC in early November at the World Bank and the Inter-American Development Bank to ensure that account was taken of their perspectives.

⁴ Colchester 1993, 1995; Tenant 1994; Gray 1995; Kingsbury 1995; Fisher 1993; Maybury-Lewis 1996; Daes 1996a:72; Pritchard 1998a:44; Pritchard 1998b:61. Some Asian and African countries already accept that the term 'indigenous peoples' applies to the 'tribal peoples' and 'cultural minorities' within their borders, including Nepal, Philippines, Cambodia and Botswana. In a landmark case for the Ainu of Japan, on 28 March 1997 a local court in Sapporo, Hokkaido, recognised the Ainu as an indigenous and minority people. The Asian Development Bank has also adopted a policy on 'indigenous peoples' to guide its operations. For a more nuanced discussion of the applicability of the concept of indigenous peoples to Asia see Kingsbury 1998.

⁵ Daes 1996b.

⁶ The Working Group on Indigenous Populations has accepted the following working definition from the 'Cobo Report' of 1986 as the basis for its work: '*Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.*'

⁷ Thornberry 1987.

⁸ Gray 1995; Thornberry 1996; Kingsbury 1995; 1998.

⁹ World Bank 1991.

¹⁰ Daes 1996b.

¹¹ The following countries have ratified ILO Convention 169: Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay and Peru. The following countries have ratified ILO Convention 107: Angola, Argentina, Bangladesh, Belgium, Bolivia, Brazil, Cuba, Dominican Republic, Egypt, El Salvador, Ghana, Guinea-Bissau, Haiti, India, Iraq, Malawi, Pakistan, Panama, Portugal, Syrian Arab Republic and Tunisia. Venezuela has incorporated ILO Convention 107 into

national law but has not registered its adherence to the Convention with the International Labour Office.

¹² Bennett 1978.

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

¹⁴ *Concluding observations of the Human Rights Committee: Canada 07/04/99*, at para. 8 UN Doc CCPR/C/79/Add. 105 (Concluding Observations/Comments 1999) cited in Kambel and MacKay 1999.

¹⁵ Jenning 1984.

¹⁶ Orange 1987; Prucha 1994; Alfonso Martinez 1998.

¹⁷ Until recently, the Human Rights Committee had avoided making a judgment on whether indigenous peoples have the right to self-determination. In the 1990 case of *Chief Omanayak v Canada*, the Committee upheld the complaint on the grounds of violations of other rights, thus leaving the Lubicon Cree's right to self-determination unaddressed. The Committee similarly declined to consider whether the ethnic Germans of Italian Tyrol constitute a 'people' in the case of *AB v Italy* the same year (Pritchard 1998:189).

¹⁸ Thornberry 1987.

¹⁹ Thornberry 1987:7.

²⁰ Simpson 1997.

²¹ World Bank 1991.

²² EU 1998.

²³ ITTO 1989; WWF 1996; ILCN 1996; WCPA 1999; International Alliance 1997.

²⁴ Morris 1985; Orange 1987; Treaty 7 elders et al. 1996; Alfonso Martinez 1998.

²⁵ Short and McDermott 1977.

²⁶ Thornberry 1987; Asmal et al. 1996.

²⁷ Bodley 1982; Colchester 1986; 1992; 1993.

²⁸ Bello 1999; Sanchez 1996.

²⁹ Sharma 1997.

³⁰ Somby 1999; Hertlein 1999; Hydro-Quebec 1999; Colajacomo 1999; Corbett 1999; Carino 1999; Anguita 1999; Gabungan 1999.

³¹ UNRISD/79/C.14, Geneva, May 1979 cited in Turton 1987:3.

³² Fisher 1993: 27.

³³ Arnstein 1969:216-224; Borrini-Feyerabend 1996.

³⁴ Srikandarajah et al. 1996; Hildyard et al. 1998.

³⁵ Cernea and Guggenheim 1997; Peters 1997.

³⁶ BIC handbooks; Pua-Villamor and Ocampo 1996; Colchester 1999.

³⁷ Letter to Baba Amte cited in Colchester 1984.

³⁸ As Cernea and Guggenheim point out, however, national laws generally frame "due compensation" in terms of monetary compensation and do not provide for wider forms of rehabilitation where the State's powers of eminent domain are exercised. "Resettlement policies concerned with providing more than remuneration for lost assets, however, are relatively recent arrivals in national and international law . . . [However] resettlement policies are part and parcel of much broader, evolving concepts about human rights in development . . . Improved international policies must be complemented by better national policies and stronger institutions to translate policies into planning principles for actual projects" (Cernea and Guggenheim 1997: 7). For example, using public funds to purchase replacement land that will be given to private individuals "is often not covered by existing legislation or may even be expressly prohibited". Similarly, "very few legal systems provide compensation for the taking of common property, even where the displaced population depends on it for the bulk of its needs". Partly on the recommendation of the World Bank, the doctrine of "eminent domain" is now "being expanded in certain legal systems to provide for measures in addition to monetary compensation" (Shihata 1993:45).

³⁹ Fernandes and Thukral 1989:111.

- ⁴⁰ Statement by the US Government to the UN Working Group on Indigenous Populations, July 1999.
- ⁴¹ *Federal Power Company v. Tuscarora Indian Nation*, 362 U.S. 99 (1960).
- ⁴² *Winters v. United States*, 207 US 564 (1908).
- ⁴³ Guerrero 1992:192-193.
- ⁴⁴ Khera and Mariella 1982.
- ⁴⁵ Although exercise of this power, and power to abrogate treaties, is bitterly contested by native Americans, the US Congress has exercised it on a number of occasions including its decision in 1993 to abrogate the Cheyenne River Sioux Tribe's rights to control non-Indian hunting and trapping under the Fort Laramie Treaty regarding lands taken by the United States for construction of the Oahe Dam and Reservoir. *South Dakota v. Bourland*, 113 S. Ct. 2309, 124 L. Ed. 2d 606 (1993).
- ⁴⁶ Fergus MacKay pers. comm. 25 June, 27 and 31 July 1999.
- ⁴⁷ Hydro-Quebec 1999.
- ⁴⁸ *Calder vs. The Attorney General of British Columbia* [1973] S.C.R. 313. Ironically, the Nishga people who fought this case, which established the principle of Aboriginal title, lost their own case (Treseder et al. 1999:10).
- ⁴⁹ Submissions by Dr. Ted Moses, Grand Chief of the Grand Council of the Crees to the WCD 30 November, 1 and 2 December 1999. For further discussion of this case see 'engineering consent' below.
- ⁵⁰ Treseder et al. 1999:11-12.
- ⁵¹ *Delgamuukw vs. British Columbia* [1997] 3 S.C.R. 1010.
- ⁵² Survival International 1999; *Canadian Natives Win Churchill Power Project EIS*, Environmental News Service 16 August 1999.
- ⁵³ James Wilson, and Colin Sanson, pers. comm. 11 November 1999.
- ⁵⁴ Garth Nettheim, pers. comm. 20 and 26 July 1999.
- ⁵⁵ James 1985:146-147.
- ⁵⁶ Tony Simpson pers. comm. 14 July 1999.
- ⁵⁷ Upadhyay and Raman 1998; Marwaha 1999; MRG 1999:19.
- ⁵⁸ IRN bulletins 9/9/1999, 13/9/1999, 4/10/99.
- ⁵⁹ Hydro-Quebec 1999.
- ⁶⁰ Statement by Alison Bartle of the International Hydropower Association to the WCD-Reuters Seminar 13 July 1999, Statement by Richard Taylor on BBC Radio 4 'One Planet', 4 August 1999.
- ⁶¹ World Bank 1994: iii-iv.
- ⁶² McCully 1996:70.
- ⁶³ The Nubian people of Northern Sudan were moved four times to make way for dams between 1902 and 1963, the majority being relocated to eastern Sudan, on the border with Eritrea and Ethiopia, in 1963 after their lands were flooded by the Aswan Dam. Those left – some 64,300 – are mainly living in Wadi Halfa province. Their three remaining centres of population – Wadi Halfa, Dongola and Marowe – are now threatened by a new dam, the Kajbar Hydroelectric Project at the Nile's third cataract. The three communities have vowed to commit mass suicide rather than be moved again: "Allowing our land to be taken means the extinction of our distinct language and culture forever. Our contention is that we must die before our culture and our language [die]. Where can we go if our area is taken." Bol 1999; see also Nubian Alliance Website < <http://I-cias.com/abubakr.htm>>.
- ⁶⁴ The Volta project is often portrayed as affecting just one ethnic group. In fact, as Graham observes, the area directly affected by the dam's reservoir was characterised by "unusual ethnic and linguistic diversity. Krobo, Ewe, Tongu, Akwamu, Krachi, Gonja and Dagomba, each with their own cultural traditions, coexisted comfortably in the region." Graham 1985:135.
- ⁶⁵ Grant 1990.
- ⁶⁶ Guerrero 1992.
- ⁶⁷ Anti-Slavery Society 1983. Since the publication of this study the population of Indigenous Peoples in the Philippines has risen from the 4.7 million then estimated to a currently estimated 6-7 million.
- ⁶⁸ The Planning Commission's Seventh Five Year Plan (1985-90) put the figure at 40 per cent. However, a report prepared by Working Group on Development and Welfare of Scheduled Tribes for the 1990-95 Five Year Plan puts the figure higher – at 50 per cent. See: Government of India, Seventh Five Year Plan 1985-90, Vol. 1, Planning Commission, 1985, pp.18-19; Government of India, Report of the Committee on Rehabilitation of Displaced Tribals due to Development Projects, Ministry of Home Affairs, New Delhi, 1985. Working Group on Development and Welfare of Scheduled Tribes, Report for Eighth Five Year Plan (1990-1995), New Delhi, cited in Thukral, 1992.
- ⁶⁹ Comments made by N.C. Saxena, Secretary to the Planning Commission, at meeting to discuss draft National Resettlement and Rehabilitation Policy, New Delhi, 21 January 1999.
- ⁷⁰ Carino 1999.
- ⁷¹ World Bank 1994: iii-iv.
- ⁷² Thukral 1992.
- ⁷³ Ackermann 1973:28.
- ⁷⁴ Fearnside 1989; Gribel 1990.
- ⁷⁵ Statement to the WCD joint consultation on 'Dams, Indigenous Peoples and Ethnic Minorities', Geneva, 31 July – 1 August 1999.
- ⁷⁶ Planners and water bureaucrats tend to view land merely as a commodity, one piece being easily exchanged with another or for cash. They may fail to comprehend its spiritual and emotional significance for many people, both indigenous and non-indigenous. Moving from one piece of land to another is thus seen as unproblematic. For example, Ernest Ravan of the International Institute for Hydraulic and Environmental Engineering notes: "Dams are not planned to submerge highly developed areas. Often the quality of life of the displaced indigenous population was low, and therefore could be an opportunity to improve living standards; the construction of large dams can sometimes prove such an opportunity. If the people prefer, however, to continue living as they have in the past, they can do so by moving upstream in the river valley" (Razvan 1992).
- ⁷⁷ Colchester 1986.
- ⁷⁸ Bennett et al. 1978:2.
- ⁷⁹ This mytho-poetic relationship to the land is well expressed by the quote from the Akawaio Indians of Guyana cited on page 2. For other examples see Moody 1988.
- ⁸⁰ Quoted in Burger 1987: 14.
- ⁸¹ Statement of the United Kurdish Committee, London, July 2nd 1999; Balfour Beatty, the UK construction company bidding for the contract for the Ilisu Dam, variously puts the figure at "less than 15,000" and "12-16,000 people" (Balfour Beatty 1999a,b,c).
- ⁸² World Bank 1982.
- ⁸³ Morse and Berger 1992:68.
- ⁸⁴ Morse and Berger 1992:79.
- ⁸⁵ Morse and Berger 1992:349.
- ⁸⁶ AfDB 1998.
- ⁸⁷ Burger 1990:98.
- ⁸⁸ Indigenous peoples and ethnic minorities often face particular problems in this regard due to their marginalised status within many societies. Where such peoples are pressing for recognition of their rights, they may not be in a position to speak out openly against a project. The Ilisu dam is a case in point. With the Turkish State engaged in a undeclared civil war with Kurds in the region where the dam is to be built, local people are reported to be afraid to voice their concerns. The war has already killed 15,000 people and 3,000 villages have been destroyed in counter-insurgency operations. Draconian laws have also been introduced to stamp out the Kurds' identity: it is currently illegal to teach the Kurdish language or to give a child a Kurdish name. Hundreds of thousands of Kurds have fled the repression by migrating to neighbouring countries or to the West.
- ⁸⁹ Robbek 1999.

- ⁹¹ Thukral 1992:22.
- ⁹² Thukral 1992:65.
- ⁹³ Scudder pers. comm. 2 August 1999; Traisawasdichai 1996.
- ⁹⁴ Quoted in Berger 1997, Annex 3:9; IRN 1999:37. The International Advisory Group, appointed to advise the World Bank on its handling of social and environmental issues on the project, has stated that it "has doubts about the effectiveness of consultations on the ground with the most vulnerable populations, particularly women and ethnic minorities (as required under OD's 4.20 and 4.30)." Its own direct contacts with these groups, though not extensive, suggest that the "level of comprehension of project proposals and their impacts is low".
- ⁹⁵ Opaso 1999.
- ⁹⁶ Testimony presented by Pat Adams of Energy Probe to the US Senate Sub-Committee on Foreign Operations, 1 May 1986; Said 1997.
- ⁹⁷ Andrade 1992.
- ⁹⁸ Treece 1987.
- ⁹⁹ *Utusan Konsumer*, April:12-13; Chee Yoke Heong, 'Not on our land: aboriginals say of dam', *IPS*, 16 May 1999.
- ¹⁰⁰ Colchester 1985; 1987:11.
- ¹⁰¹ ILO 1986: 'Report on the Committee of Experts, Observations Concerning Ratified Conventions', International Labour Conference, Provisional Record 31, 72nd session (No. 31/51-31/52). Exchanges between the ILO and the Indian Government have continued on this issue for the last 15 years. While the ILO has held to its opinion that adivasi's customary rights should be recognised for the purposes of compensation and rehabilitation, the Government of India has persisted in asserting that 'landless oustees' are 'encroachers' on State lands and not entitled to the same treatment as those with land titles. See for example 'Report of the Committee of Experts on the Application of Conventions and Recommendations', 1993:311-314.
- ¹⁰² World Bank, 1984.
- ¹⁰³ Morse and Berger 1992:350.
- ¹⁰⁴ Omvedt 1993.
- ¹⁰⁵ Pittja 1994:54.
- ¹⁰⁶ Guerrero 1992.
- ¹⁰⁷ *United States v David Sohappy, Snr et al.*, 477 US 906 (1986), cert. denied. Cited in Guerrero 1992.
- ¹⁰⁸ Guerrero 1992.
- ¹⁰⁹ Hertlein 1999:8.
- ¹¹⁰ Submission of the Grand Council of the Crees (Eyou Istchee) and the Cree Regional Authority to the Commission on Territorial Management of the National Assembly on the *Global Study of the Development of the Region of Northern Quebec*, 6 October 1978, p.5 http://www.gcc.ca/Political-Issues/positions/commission_on_territorial_management.htm
- ¹¹¹ Crees and Trees, An Introduction, p. 3. http://www.gcc.ca/Environment/forestry/crees_and_trees_an_introduction.htm.
- ¹¹² Shucking 1999: She also notes: "The actions of the authorities in Samraj are clearly illegal. According to India's Land Acquisition Act, written notice must be given, as well as a time period allowed for landowners to put forward objections before they can be expropriated. If the objection is overruled, they receive compensation for payments based on prices for similar land in the same area. Because the affected people in this case belong to the scheduled castes and scheduled tribes, there are additional legal provisions to protect their rights."
- ¹¹³ Oliver-Smith 1991:143; CIHT Commission 1991:13. Many of those resettled were displaced twice - US engineers underestimated the size of the reservoir, resulting in many of the original resettlement sites being flooded.
- ¹¹⁴ Fahim 1981: 73.
- ¹¹⁵ Horowitz 1989.
- ¹¹⁶ Horowitz 1989; Scudder 1990.
- ¹¹⁷ Gunaratna 1998: 13.
- ¹¹⁸ Scudder 1990, 1994.
- ¹¹⁹ Bello et al. 1982.
- ¹²⁰ Pearce 1992.
- ¹²¹ Drucker 1984; Fay 1987.
- ¹²² Survival International News 1985 (7):1.
- ¹²³ Women Workers' Programme 1996:13.
- ¹²⁴ World Bank 1993b.
- ¹²⁵ Graham 1985:34.
- ¹²⁶ Thukral 1992:16.
- ¹²⁷ Bosshard 1998.
- ¹²⁸ King 1986.
- ¹²⁹ Thukral 1992:16.
- ¹³⁰ Karve E. and Nimbkar, J., A Survey of People Displaced Through the Koyna Dam, Deccan College, Pune, 1969. Cited in Thukral 1992:16.
- ¹³¹ Rich 1994:43-46.
- ¹³² Morse and Berger 1992.
- ¹³³ Partridge 1984.
- ¹³⁴ Partridge 1984, Appendix 2:1. Recent NGO surveys suggest that more like 300,000 people will be displaced to make way for the Narmada Sagar project.
- ¹³⁵ Discussing the general problem of resettlement, the World Bank acknowledges the differential impacts on men and women, arguing that women's lives tend to be worse disrupted than men's. "Women are harder hit by resettlement than men since they are more likely to earn their living from small businesses located at or near their residences. Women may also be affected disproportionately in rural areas since they are more often dependent on common property resources. For example, gardens may more frequently be on unregistered lands than fields owned by men". (World Bank 1984: 2/9).
- ¹³⁶ Hertlein 1999:9.
- ¹³⁷ Morse and Berger 1992.
- ¹³⁸ Hew Cheng Sim 1986:23.
- ¹³⁹ Colchester 1989:61.
- ¹⁴⁰ Carney 1988; Watts 1992.
- ¹⁴¹ Scudder 1994.
- ¹⁴² Thukral 1992:16.
- ¹⁴³ IRN 1999:47.
- ¹⁴⁴ Colajacomo 1999.
- ¹⁴⁵ Guggenheim 1993:205.
- ¹⁴⁶ Udall 1992.
- ¹⁴⁷ Udall 1992.
- ¹⁴⁸ World Bank 1993b.
- ¹⁴⁹ Stewart et al. 1996.
- ¹⁵⁰ Other social justice groups, such as the Berne Declaration, point out that the dam, as currently conceived, breaches World Bank's guidelines for development projects on 18 counts, including OD 4.30 on Involuntary Resettlement. There has been no consultation with affected people or local NGOs. No rehabilitation plans are place for those who would be ousted by the project. And no compensation package has been agreed. (Bosshard 1998).
- ¹⁵¹ Quoted in Roy 1999.
- ¹⁵² World Bank 1994.
- ¹⁵³ World Bank 1993:v.
- ¹⁵⁴ World Bank, 1994:x.
- ¹⁵⁵ World Bank 1994:4/3.
- ¹⁵⁶ World Bank 1993a; Pongsapich et al. 1992; Hubbel 1994.
- ¹⁵⁷ Scudder 1994.
- ¹⁵⁸ Cited in Chandler 1984.
- ¹⁵⁹ Grant 1990:83. Grant notes (p.83): "Overall, the black communities affected by TVA reservoir removal were not given substantial help in reordering their lives. Several regional planners with considerable power to approve or reject requests held racial views that did not allow for equal treatment of blacks . . . Even communities whose

- leaders conformed to local standards of acceptable behaviour were treated unequally.”
- 159 Grant 1990:82.
- 160 ‘Oustees of Nagarjunsagar dam after four decades: they kill the girl child to survive poverty and hardship’, *Indian Express*, 4/9/1999.
- 161 Dharmadhikary, S., Testimony to WCD Sri Lanka Hearings. The adivasi families displaced by Bargi were promised 2 hectares of replacement land each, even though their holdings had often been much larger than this. Because of incompetent surveying, many families had to be resettled twice after their new lands were submerged by the reservoir. Some of those displaced were moved to an ‘ideal village’ at Gorakhpur. Although the village had a hospital and a school, there were no medical staff and no teachers. Deprived of almost any means of subsistence, five people of starvation died in Gorakhpur between 1990 and 1992. (Daud 1993).
- 162 Yashwant, S., “Bijasen, and Beyond: Driven away by Dams”, *Frontline*, 30 July 1993.
- 163 Parasuram 1994:17.
- 164 Lokayan 1985; Srisailiam 1986:259.
- 165 Submission to WCD Brazil Hearings.
- 166 Submission to WCD Brazil Hearings.
- 167 Testimony given to author in Madungandi in 1990.
- 168 IRN 1999:37.
- 169 Dennis 1997:14-15.
- 170 Hirsch et al. 1992.
- 171 Furer-Haimendorf 1982.
- 172 Acreman and Hollis 1997.
- 173 Treece 1987.
- 174 Maninder Gill and Sandy Davis, pers. comm. 9 November 1999.
- 175 Sayer 1991:44.
- 176 Down to Earth No. 5 1989.
- 177 Chandrasena 1993.
- 178 Morse and Berger 1992: in 1994 the Narmada Bachao Andolan estimated that 40,000 adivasi would be affected by the compensatory wildlife sanctuaries in Sardar Sarovar project area (‘Supreme Court of India Writ Petition’.
- 179 Fearnside 1990:50.
- 180 Open Letter from Berne Declaration to President Jaing Zemin, 19 March 1999.
- 181 *South China Morning Post*, Thursday, 27 May 1999, ‘Zhu breaches silence on Three Gorges Dam failures’.
- 182 Carino 1999.
- 183 Robbek 1999.
- 184 In the early 1900s, the fortunes of the Pima and Maricopa O’Odham peoples of the Gila River Reservation plummeted as a result of the diversion of water from the Gala for use by white settlers – with the result that the Indians were deprived of water for their irrigated farming. The first decade of the 20th century is known by the Pimas and Maricopa O’Odham as the “black decade”. Many other tribes have suffered similarly.
- 185 Guerrero 1992.
- 186 Letter from Ted Strong of the Columbia River Inter-Tribal Fish Commission, undated.
- 187 Columbia River Inter-Tribal Fish Commission, “Altering the Dams: Restoring the ebb and flow of the river”, n.d. There are now 29 dams in the Federal Columbia River Power System. The other 107 dams that affect salmon are either owned by the federal government or licensed by it.
- 188 Columbia River Inter-Tribal Fish Commission, “Altering the Dams: Restoring the ebb and flow of the river”, n.d.
- 189 Columbia River Inter-Tribal Fish Commission 1998; Hollenbach and Ory 1999.
- 190 Ortolano and Cushing 1999.
- 191 Dharmadhikary, S., Testimony to WCD Sri Lanka Hearings
- 192 Association of Producers for Communal Development of La Cienega Grande de Lorica (ASPROCIG), Submission to the World Commission on Dams for Sao Paulo Public Hearing, July 1999.
- 193 Statement by Carlos Figueroa of the Federacion de Indigenas del Estado Bolivar, Venezuela, to the World Commission on Dams (n.d.).
- 194 Colchester 1996.
- 195 McCully 1996:40. [Hydro-Quebec has since made an agreement with the affected Cree to compensate them for this serious problem]
- 196 Philip Raphals, ‘The Hidden Cost of Canada’s Cheap Power’, *New Scientist* 15 February 1992:52.
- 197 Joseph Milewski pers. comm. 20 September 1999 citing Chevalier, Dumont, Langlois and Penn 1977 and Dumont, Girard and Bellavance 1998.
- 198 Raphals op. cit. note 196.
- 199 Submission of the Grand Council of the Crees, 1 December 1999.
- 200 Carino 1999.
- 201 Colajacomo 1999. The InterAmerican Development Bank, which co-financed the Chixoy dam with the World Bank, initiated a watershed management and community development project in the Chixoy watershed in 1992 (IIB 1999).
- 202 Lewis and Knight 1995.
- 203 Omvedt 1994.
- 204 McKinnon and Bhruksasri 1986; McKinnon and Vienne 1990.
- 205 Cobo 1986; Colchester 1992.
- 206 Thornberry 1987:7.
- 207 Statement by Quilombo spokesperson, Oriel Rodrigues Moraes, to the WCD joint consultation on ‘Dams, Indigenous Peoples and Ethnic Minorities’ in Geneva, 31 July -1August 1999.
- 208 Colchester 1986.
- 209 Andrade 1992.
- 210 WCED 1987: 114.
- 211 Colchester 1997.
- 212 Ferguson 1990.
- 213 Cited in Carino 1999.
- 214 Espeland 1998:1.
- 215 Espeland 1998:205.
- 216 Espeland 1998:208.
- 217 Espeland 1998:216.
- 218 O’Neill 1996 :99.
- 219 Quoted in Burger 1987:14.
- 220 Graham 1985:134.
- 221 Morse and Berger 1992.
- 222 While accepting these problems, World Bank officials believe that cost-benefit analyses can be suitably modified to incorporate social and environmental values and can be particularly effective when they include prior consultations with those affected.
- 223 Guidelines – Environmental Impact Statement for the Proposed Great Whale River Hydroelectric Project, Evaluating Committee et al., Aug. 28, 1992, pp. 3-4. The Guidelines were adopted unanimously by these five bodies, composed of representatives of the Cree, the Inuit, the Government of Canada and the Government of Quebec.
- 224 Guidelines, pp. 4-7.
- 225 Ibid., p. 22.
- 226 Joint Report on the Conformity and Quality of the Environmental Impact Statement for the Proposed Great Whale River Hydroelectric Project, Provincial Review Committee et al., p. 3. <http://www.gcc.ca/Environment/hydro/background/conformityreport.htm>.
- 227 Ibid., p. 65.
- 228 Ibid. p. 17.
- 229 Submission of the Grand Council of the Crees to the WCD, 1 December 1999.

- ²³¹ INSAN 1996; WRM/Forests Monitor 1998; Gabungan 1999.
- ²³¹ Paul Joffe and Mary Ellen Turpel, quoted in Grand Council of the Crees (Eeyou Astchee), *Never Without Consent*, ECW Press, 1998, pp. 121-122.
- ²³² Submission by the Grand Council of the Crees to the WCD, 1 December 1999.
- ²³³ Scudder 1994.
- ²³⁴ Statements to the WCD Joint Consultation on 'Dams, Indigenous Peoples and Ethnic Minorities', Geneva, 31 July-1 August 1999; Corbett 1999; Hertlein 1999; Anguita 1999.
- ²³⁵ World Bank 1993: iii.
- ²³⁶ World Bank 1993:15.
- ²³⁷ World Bank 1993: iv and 14.
- ²³⁸ World Bank 1993: ii.
- ²³⁹ World Bank 1993: 8.
- ²⁴¹ Coady, P., Statement to World Bank Board Meeting, 23 October 1992.
- ²⁴¹ Rich 1994:148ff.
- ²⁴² The distinction between private and public-sector dam building is not always easy to make. Many dams are built by private companies on 'build, operate and transfer' contracts with government agencies
- ²⁴³ Rich 1994; Hildyard 1999.
- ²⁴⁴ Ahuja et al, 1997:9. Between 1975 and 1995, for example, the proportion of East Asians living in absolute poverty declined from 60 per cent to 20 per cent, whilst the number of poor in the region fell by half: from 720 million to 345 million. Some of these gains, however, have been lost to the recent South East Asian economic collapse.
- ²⁴⁵ Sadie 1960:302.
- ²⁴⁶ Etonga-Manguelle 1991.
- ²⁴⁷ Ohno 1997: 13.
- ²⁴⁸ Agarwal and Narain 1997.
- ²⁴⁹ LeMoigne et al. 1991.
- ²⁵⁰ Goldsmith and Hildyard 1984: Vol 1.
- ²⁵¹ McCully 1996; Usher 1997.
- ²⁵² General Recommendations of the Committee on the Elimination of Racial Discrimination XXIII (51) concerning Indigenous Peoples, CERD/C/51/Misc 13/Rev.4.
- ²⁵³ Thukral and Sakate 1992:143-154.
- ²⁵⁴ Dozier 1966:212ff.
- ²⁵⁵ Regpala 1990.
- ²⁵⁶ Diaz de Jesus and Jesus Alejandro 1999.
- ²⁵⁷ Khera and Mariella 1982; Guerrero 1992; Hertlein 1999; Hydro-Quebec 1999.
- ²⁵⁸ Shripad Dharmadhikary Testimony to WCD Sri Lanka Hearings.
- ²⁵⁹ See, for example: Association of Producers for Communal Development of La Ciénaga Grande de Lorica (ASPROCIG), Submission to WCD Public Hearings, Sao Paulo, July 1999. ASPROCIG notes of those affected by the Urrea Dam in Colombia: "Urrea S.A. and the Colombian government have totally refused to allow the affected communities to participate in decision making about the construction of the dam. It is only through their own actions, international pressure and the ruling of the constitutional court that Urrea SA and the Environment Ministry have taken timid steps toward consulting those affected."
- ²⁶⁰ McCully 1996:7.
- ²⁶¹ Khera and Mariella 1982.
- ²⁶² Guerrero 1992.
- ²⁶³ Michael Swan, an attorney involved in western water rights litigation for the US Interior Department, quoted in Guerrero 1992:207.
- ²⁶⁴ Quoted in Guerrero 1992:208.
- ²⁶⁵ Schucking 1999.
- ²⁶⁶ Delphi International 1996; INSAN 1996.
- ²⁶⁷ New private sector standards are also being adopted by other sectors. For a discussion of indigenous peoples and oil development see Tomei 1998.
- ²⁶⁸ IFC 1998:3 emphasis added.
- ²⁶⁹ ICOLD 1997 emphasis added.
- ²⁷⁰ Canada 1996:41-42 cited in Hydro-Quebec 1999:12.
- ²⁷¹ Hydro-Quebec 1999 emphasis added. As noted in Section 1, Canadian practice obliges Hydro-Quebec to seek consent for its schemes. Its failure to gain such consent in the Grande Baleine project, after a substantial investment in project planning and impact assessments, has made the company very aware of the need to work closely with affected communities if it is to secure the outcome that it desires.
- ²⁷² Hydro-Quebec 1999; Corfa and Milewski 1998:10.
- ²⁷³ Submission of the Grand Council of the Crees to the WCD, 1 December 1999.
- ²⁷⁴ Hydro-Quebec 1999.
- ²⁷⁵ Corfa and Milewski 1998:8.
- ²⁷⁶ Statement by Real Courcelles of Hydro-Quebec to the WCD Joint Consultation on 'Dams, Indigenous Peoples and Ethnic Minorities', Geneva, 31 July -1 August 1999; Joseph Milewski pers. comm. 20 September 1999.
- ²⁷⁷ Hydro-Quebec, *L'aménagement Sainte-Marguerite-3: "En accord avec le milieu"*, <http://www.assnat.qc.ca/fra/publications/debats/journal/ch/991109/1410.htm#991109029>. Hydro-Quebec, *Amenagement hydro-electrique Sainte-Marguerite-3: Etude complementaire en reponse a la condition 3 du decret gouvernemental*, January 1995.
- ²⁷⁸ Hydro-Quebec 1999:3-4.
- ²⁷⁹ Bosshard 1999.
- ²⁸⁰ Butcher 1971.
- ²⁸¹ Pua-Villamor and Ocampo 1996.
- ²⁸² Sarawak Museum 1979.
- ²⁸³ King 1986; Hew Cheng Sim 1986; Colchester 1989:59-61; eg International Alliance 1992.
- ²⁸⁴ IDB 1985:30-31.
- ²⁸⁶ IDB 1996.
- ²⁸⁷ And see letter from the IDB to the WCD published below.
- ²⁸⁸ IDB 1998:2, 23-24. IDB staff had initially sought to include a provision in the policy stating that IDB projects should not require the involuntary resettlement of indigenous people at all. However, this was over-ruled by the board and, at the insistence of the government of Brazil, the term 'Indigenous Peoples' was substituted with the term 'indigenous communities'. A draft 'strategy' on Indigenous Peoples is currently in preparation.
- ²⁸⁹ AfDB 1998:8 emphasis added.
- ²⁹⁰ AfDB 1998:14.
- ²⁹¹ World Bank staff expressed these views at the joint WCD/World Bank seminar held in Washington DC on 1 November 1999 to discuss this draft paper. Staff are particularly uncertain about how consent is assured and believe that the Canadian experience may not be replicable in countries with different political, cultural and juridical traditions. See also IFC 1998.
- ²⁹² Kingsbury 1999.
- ²⁹³ About 42 individuals attended the consultation in Geneva (see annex 2). The meeting which was co-sponsored by the World Commission on Dams, the Forest Peoples Programme, the World Council of Churches, the International Work Group for Indigenous Affairs, the United Nations Office of the Commissioner for Human Rights and the TebTebba Foundation received additional support from Novib. The meeting included representatives of these agencies, the International Labour Organisation, representatives of indigenous peoples and ethnic minorities, industry, one para-statal organisation and a number of NGOs. Representatives of governments and multilateral development banks had been invited to the meeting but declined to attend.
- ²⁹⁴ E/CN.4/Sub.2/1997/14. □

CONSULTATIVE MEETING ON DAMS, INDIGENOUS PEOPLES AND ETHNIC MINORITIES

Geneva 31 July - 1 August, 1999
World Council of Churches
Switzerland

PARTICIPANTS LIST

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		Rebecca Fan	USA
		Mary Coyle	USA

NORWAY



THE ALTA-CASE: A STORY ABOUT HOW ANOTHER HYDROELECTRIC DAM-PROJECT WAS FORCED THROUGH IN NORWAY

by Ande Somby ¹

1. A Yoik

*Sámi eatnan duoddarat
galbma garra guovllut
geađe borge máilbmi
Sámiid mánaid ruoktu
Liegga litna salla.²*

2. A Yoiking approach

With this *Yoik* I would like to declare to you that I feel very lucky to be here. I wish to honour you all in the most ceremonial way that I can. My topic, the development of the legal situation of the Saami people in Norway, has certain things in common with this *Yoik*. There are both topical reasons and ceremonial.

I will first briefly introduce myself, and then my *Yoik*. Then I will provide you with a general overview of the legal situation. The establishment of the Saami Parliament and the Saami article in the Norwegian constitution are important items, so I will use a bit of time on them.

Yoik is different from the regular idea of singing in several ways. I will point out a few differences. You don't *Yoik* about someone or something. You *yoik* someone or something. *Yoik* has no object. That emphasizes perhaps that

talking or thinking about *Yoik* in subject-object concepts isn't possible. Maybe the singer is a part of the song?

The regular concept of a western European song is that it has a start, a middle and an ending. In that sense a song will have a linear structure. A *Yoik* seems to start and stop suddenly. It hasn't a start and neither an ending. A *Yoik* is definitively not a line, but it is perhaps a kind of circle. A *Yoik* is not a circle that would have Euclidian symmetry although it has maybe a depth symmetry. That emphasizes that if you were asking for the start or the ending of a *Yoik*, your question would be wrong. Therefore I have to use what is perhaps the most common language in the world, broken English.

There are *Yoiks* for persons, animals and landscapes. In our tradition it was very important for the personal identity to get a *Yoik*. It was like getting a name if you got your own *Yoik*. *Yoiking* a landscape had possibly similar

ritual connotation, and the same goes for an animal's *Yoik*. It is not easy even for the trained ear to hear the differences between an animal's *Yoik*, a landscape's *Yoik* or a person's *Yoik*. That perhaps emphasizes that you don't differ so much between the human-creature, the animal-creature and the landscape-creature as you regularly do in a western European context. Your behaviour will therefore maybe be more inclusive towards animals and landscapes. In some respects this also emphasizes that we can have ethical spheres not just towards fellow humans but also to our fellow earth and our fellow animals. Can you own some of your fellows?

I *yoik* *Yoiks* from my area, and there are many of other dialects so to speak in *yoiking*. They can differ from melodic epic *Yoiks* to imitating birds. Inside a *Yoik* dialect it would be differences between *yoiking* individuals. That emphasizes that *Yoik* is not living in a society of uniformity. *Yoik* perhaps rather belongs to, and lives in a life of diversity.

It will be difficult for a musician to work with me. The *Yoik* will always be a little different from one time to the next. The musician will on his side always expect that I start in the same tone every time. His accords would then fit in, and he could follow his accords-symmetric system. I would have problems to hit the musician's tone. My mode or mood could have changed since the last time we rehearsed. That emphasizes that a *Yoik* is not a fixed status, but perhaps rather a process. It also emphasizes that you can't use squares and pyramids or other symmetric principals when you understand *Yoik*. Would you like to have a little bird that doesn't move? It would perhaps be beautiful in a square cube made of glass, but it will not remain alive.

This particular *Yoik* belongs to the tundras of the Saami-land. It is made by our very celebrated creative native Nils-Aslak Valkeapää, and it tells that it is so cold there. It is so hard there. There are many rocks. There is so much snow there. Winterstorms. There are also small foot-tracks. For some it is their warm and soft homeland. This *Yoik* was important for the development of the Saami rights.

3. Brief contextual introduction

Even if most of the Saami peoples live in quiet and well-regulated northern Europe, still the history of our people is not a nice story. It contains much pain, and it hurts me to talk about it. Our people have traditionally been hunters, fishermen and reindeer-herders. We lived in the northern part of Norway, Finland, Sweden and Russia. I will not dwell on the days of Adam and Eve. We lost our paradise. There are some diversities between how it happened in Norway, Finland, Sweden and Russia.

I will mainly speak about the Norwegian development. It contained a so-called norwegianizing policy. This policy has varied from time to time. Both our religion, our economy and culture were attacked. Together with the

church the state considered our spiritual leaders as heathens. They were both stigmatized and some times treated as criminals. Some of them were burned. Parts of the church still want to prohibit *yoiking* because they consider it pagan.

Our right to exploit the land wasn't recognised as legal, and our people had to move when farmers or other people came. The question was raised as how we could be bearers of ownership? We didn't stay at the same place during the year, but we went to the coast during the summer. Maybe it was even a problem that our relationship to the earth couldn't be organised by ownership. How could your mother become your property?

Our children were taken away from their homes and were raised in boarding schools. Our language was prohibited in the schools until 1959. I forgot to tell you that I was born in 1958.

The motives for the policy of integrating us, was for sure to make us able to be in a modern Norwegian context.

From the sixties pedagogic expertise advised the school-system to teach the kids to read and write in their own language. We got some Saami lessons in school and some time after we also realized that it was possible to survive through the educational system. The first small plants had started to grow.

At the end of the seventies we had a number of Saami academics, who became activists. We also started to have artists. We also saw that the Norwegian people had changed their attitude. There were established public funding programs for Saami literature. Somehow we could smell spring in the air.

4. The Alta case

At the same period the Norwegian government had a plan to construct a hydroelectric dam, which later became the famous Alta-case. The Alta river has a total length of 170 km from the starting point near the border between Finland and Norway to its endpoint in the Alta fjord. There are a number of minor rivers connected to the Alta river. The river passed the Saami Village Máze, and transformed to a lake called Latnatjávri. After a passage of 4 km the river again transformed to a lake, Virdnejávri. After Virdnejávri the river went into a distinct canyon. Then it passed some settlements and farming land before it ended up in the Altafjord. 40 km of the river had salmon, and was known as one of the very best salmon-rivers in Norway.

The first plans to build the Alta dam emerged from the Norwegian Water Resources and Energy Directorate (NVE) in the middle of 1950's. At that time the plans were huge. Practically speaking most of the Finnmark tundra would have been under water today if those plans had been realised. That means that traditional reindeerherding would have been wiped out in the core area. Even if the Saami people did not have a very sophisticated level of

their organisations- somehow the NVE understood the signals of the society, and backed out with the plans.

When the Saami world heard of the plans for the second time, they were reduced. That was in the beginning of the 1970's. Then only the western part of the Finnmark tundra was in the plans. The famous point with those plans was the destiny of Máze. The plans implied that people had to be moved from the village, and that was illustrated by the metaphor that one would only see the top of the tower of the church of the village. At that time the resistance became visible and organised. One famous demonstration took place, and became the icon for the resistance. The resistance was backed up by the Saami organisations, the environmentalists and local salmon-interests. After a while NVE again went back into its think-tank with the plans. In a decision on the 6th of April 1973 the Norwegian Parliament (*Stortinget*) decided to preserve Máze, and also many of the small connected rivers.

When the third round of the Alta case started NVE had reduced the plans even more. At that stage the plan still implied a major dam. Both the rivers Tverrelva and Iesjohka were included, and the plan was to build a reservoir in Virdnejávri connected with a system of tunnels. During the process the plans were reduced so that the dam only included Virdnejavri and the canyon. At the end of the canyon there was to be built a wall of concrete, which was 110 meter tall.

There was strong resistance against that hydroelectric project. It became a kind of alliance between the Saamis and the environmentalists. The resistance was formalized both through the political - and later through the legal system. The political system didn't recognize the resistance, and the Parliament of Norway decided to build the dam. The decision was confirmed 3 times by the Norwegian Parliament and finally by the Supreme Court of Norway in a unanimous plenary decision on 26th of February 1982.

5. The protests against the Alta Dam

The most famous parts of the resistance became the demonstrations. Two demonstrations are famous. The zero-point demonstration established a point of zero, which shouldn't be passed by the machines. People sat there preventing the machines from passing. That demonstration went on for approximately one and a half years.

The second demonstration was the Saami hunger-strike. It was the first hunger-strike in Norwegian history. It took place in October 1979. Seven young Saamis took a *lavvo* (Saami tent), and raised it on a lawn outside the Parliament of Norway. They hadn't got formal permission to have this *lavvo* on that lawn, and they were threatened by the police. Somehow the population of Oslo took these seven Saamis under their wings. The media emphasized

that the Saamis had always lost. Young Norwegians, old ladies, artists, children came and they sat there. The crowd became so large that there had not been so many people assembling publicly since the freedom celebration at the end of World War II in 1945. It took time until the police carried the Saamis away. During that time this *Yoik* became an anthem. I don't think the Saamis were aware of that during those demonstrations as they used also their stories and took metaphors from them. The Saami argumentation became much more mythological.

The Saamis started to feel summerwinds to their case, and so obviously did the Norwegian politicians. The Norwegian prime minister came out with two announcements. In the first he announced that they made a preliminary stop in their construction plan of the dam. The second announcement was that the Norwegian Parliament would establish a Saami legal rights commission. Then the first Saami hunger-strike got its victory, and it could end.

The preliminary stop in Alta lasted until a very cold day in February 1982. The Norwegian government sent a police force of a thousand police officers to Alta. The police force carried away all the demonstrators. That day could be declared the coldest in Saami history, and an extremely cold day in Norwegian history as well.

The Saami interests tried, together with environmental interests, to bring an end to the Alta project via a legal process. The government won the case. That also made a cold day in the Saami history in 1982. There are more nosebreakers than successes when it comes to litigate Saami rights in the Norwegian court system.

The Saami Rights Commission became the good part of this story. The commission contained both legal experts, representatives for the public and representatives for interest organizations - including Saami interest organisations. It was lead by professor of law Carsten Smith, and in 1984 it came up with its first report. The question about land rights was of course the burning one. The committee decided first to give a general overview of the legal protection of the Saamis, and return to the question of land rights later.

The 1984 report represented the first time in which the Norwegian government had been involved in an analysis of the Saami rights issue. The expert group made an analysis of the legal history of the Saami people. They also analysed the Saami peoples' rights based on international sources. One of these parts had a particular interest. They analysed article 27 of the UN International Covenant on Civil and Political Rights, which addresses that a person shall have the right together with other members of his group to have his culture. They made an analysis of whether cultural only referred to ideological expressions as songs, literature, theatre, storytelling traditions or if it also had implications for the material base for a culture - in other words the question of cultural protection of natural resources. The commission concluded that the international protection of the Saamis was much stronger than it had been recognized in Norway. Concluding, the report



Saami protest against the Alta Dam. Photo: Nillus A. Somy

contained two proposals. The first proposal was that we should get a Saami Parliament. The other proposal was that the Saami culture, language and society should be recognized in the Norwegian constitution.

Both proposals went through. There was a short debate about the Parliament, and some political compromises had to be made. In 1987 the Saami Act became a part of the Norwegian legislation. **The same year the Saami article was included in the Norwegian constitution. The Saami Parliament was declared** open in October 1989 by His Majesty King Olav the 5th. One decade has passed. The Parliament is building up its administration and bureaucracy.

6. One of the outcomes for the Saami people: the Saami Parliament

The Saami Parliament is a body **that covers all** of Norway. It is a national body, and **would be a federal** body if we were to translate that to the **language of your system**. Every fourth year - at the same time **when representatives are**

elected to the Norwegian Parliament - there are 39 elected representatives. **The Act contains** regulations on the **procedure of the elections. The act also** regulates what kind of status - advisory or binding the Saami Parliament has. The Parliament has its administration. I shall discuss the elections and the status.

Look at me. I hope I am a natural man. I have not a natural tan. I am blond. **The Saami people is the people** of the thousand faces, and we **don't fit into the indigenous** people stereotype with black hair and dark skin. That gives us a lot of trouble - but also some advantages. You never know who and where we are. It also gives us exits to fly into the big societies if the world becomes too hard. That is a problem to face when you are a Saami. When it comes to recognize us as indigenous people, we don't fit into the natural-tanned-stereotype. So the participation to the elections cannot be based upon a natural tan in combination with mathematics about blood percentages.

That was also the problem with the regulations of who can vote a representative to the Saami Parliament. In the

Saami Act that depends on two conditions that are cumulative - both of those conditions have to be fulfilled simultaneously.

The first condition is that you give a declaration or statement that you consider yourself as a Saami. That principle is emphasizing that participation in the Saami society is based upon free will. No one shall be forced to remain a Saami. That is the so-called subjective aspect.

The second condition is a connection to the Saami language. The norwegianizing policy has taken away the language from many Saamis. Maybe most of the Saamis don't speak their own language. The policy is not to exclude the Saamis who have lost so much of their own. Therefore this language-based criterion has three alternatives. The first is that you yourself must have Saami language as your home language. The second alternative is that one of your parents has had Saami language as home language. The third alternative is that one of your grandparents has had Saami language as their home language.

Otherwise, Norway is divided in 13 election districts. From each district three representatives are elected. The people are not a homogeneous mass, so there are some districts that cover larger geographical areas than other. There is not the same number of votes behind each representative. The concentrated population in the northern part is a little bit less represented than the southern part. Besides that we have the fact that the Saami population is not a homogeneous mass - so it is not appropriate to talk about the Saami people. We have the Saami peoples. Therefore a terminology from the European concept of national states doesn't fit.

In other senses the elections to the Saami Parliament are based upon the regular regulations concerning elections to the Norwegian Parliament. The most interesting ones would be the following:

- The voter must be a Norwegian citizen
- The voter must be older than 18 years
- The voter shall not have lost his right to vote because of a criminal case against him.

To become elected to the Saami Parliament is determined basically by the same conditions as those that determine the right to vote. However, the elected officer can under certain conditions get a permission to turn down the post. The main condition would be that the election is causing a burden. One can also turn down the post if one has been a representative the last four years. Staff from the administration of the Saami Parliament can't be elected.

The question of what the status of the Parliament is can be divided in three questions. Does the Parliament have advisory or binding status? Can the Parliament take up an item on its own initiative or must it wait until a Norwegian governmental body is addressing a question to the Saami Parliament? Can the Saami Parliament take up every case, or is it formally regulated which items are Saami-items.

The answer to the last question is that the Saami Parliament is free to define every given case to be a Saami case.

The answer to the second question would be that the Saami Parliament has both the right to make initiatives on its own on one hand and to react to governmental bodies' initiatives.

The first question is of course the biggest and most important. Technically, it is interesting how legislation is formulated in the Saami Act. The act says that the Parliament has binding status in areas where that is explicitly addressed in the Norwegian legislation. The point of this addressing technique is to emphasize that giving the Parliament status will be a dynamic principle. The present political program seems to be that the Parliament should get more status over time. That means that in most of the areas the present status is an advisory Saami Parliament. On the other hand there are certain areas where the Norwegian government has formally delegated binding status to the Saami Parliament. Examples to that would be administrating governmental granting to the Saami cultural activities, the Saami school and education programs and so on.

The Saami people are not a military unit, but more like a family. It means that we are not marching towards the same directions at any given time. We can have our quarrels. One discussion can illustrate how that works. It is the discussion whether the Saami Parliament should get the responsibility over the reindeer programs. The reindeer herders have two interest organisations. The most influential of the two - the Norwegian Reindeerherders Organisation (NRO) - was quite sceptical that the Saami Parliament should get the responsibility. In Norway we have a national reindeer board, which is appointed by the government. The appointment is determined by suggestions from different types of interest organisations. The hot question was whether the central government should appoint the public representatives or if they should be appointed by the Saami Parliament. The government had proposed that the Saami Parliament should do that in the future. NRO didn't support the proposal. Their main argument was that if the central government did appoint the public representatives, then it would secure that the reindeer programs would be supported by expertise. NRO went to Oslo, and the majority of the Norwegian Parliament decided that the Saami Parliament should select one of the three public representatives. NRO could be suspected of arguing for Saami rights only occasionally. The story must be modified. The other organisation, Norwegian Reindeers Owners Association (BES), supported the Saami Parliament. BES has approximately the same amount of members, but hasn't got the same influence as NRO. This illustrates however that the parliamentary form of representation is not unquestionable.

I have pointed out some legal aspects that will determine the status of the Saami Parliament. The status will however also be determined by how many economic

resources the Parliament can get during its childhood. Yet we don't know certain things. Will the Norwegian government give wide enough budgets and financial programs to the Parliament to build up a body, which would be able to define which items were important to the Saami society, come with its own initiatives and manage to administrate binding status? In the worse case it could be a poor body that became "papered down" by the governmental bodies.

The situation is very open at the time. The picture has some clear and nice colours, but it also has grey and brown. The picture is definitively not a photography - maybe rather a video. Yet we don't know the storyline, and there are both optimists and pessimists among us.

7. Another of the outcomes: The Saami article in the Norwegian constitution

The Saami article declares that the Norwegian state has a national obligation to make efforts so that the Saami culture, language and society shall be secured and developed.

The starting point for the article was that the Saamis required formal recognition. The official Norway answered by including that recognition in the constitution. This was the most solemn and obligating way of doing that, and this article was to symbolize the reverse of the policy of norwegianizing the Saamis.

The text of the article itself is brief, but it raises many questions. Has it secured and developed the legal protection of the Saami culture, language and society? Are the Norwegian courts among the bodies of the Norwegian state that are obliged by this article? Does the article just give a duty for the Norwegian state or does it also imply corresponding rights for the Saamis? If it gives rights, can a Saami individual claim them or is it just the Saami people through its Parliament that can claim rights? Does the article just prohibit negative discrimination of the Saamis or does it give an obligation to discriminate positively, i.e. when it comes to give Saami seats in lawschools?

We can't go into all of these questions. I will just comment on some of them.

Before we can raise these questions at all, we face some methodological problems. We have the tradition in the Norwegian legal context that our constitution is rather considered as an anachronism than a legal text. Secondly we consider the constitution more as a political than a legal text. There are not many cases litigated in Norway where the constitution is used as a reference.

At this stage I must also focus on a difference between our jurisprudence in Norway and the Anglo-American jurisprudence. In our system legal history for the legislator is considered an important legal source. I understand that in the Anglo-American system court cases are much more important. Decisions made by the Supreme Court in a

question of interpretation an article in an act is considered as a very important legal source in our system as well.

Many of the questions above were raised in a case from 1992. It was a criminal case against a Saami, Mr. Gaski. Gaski hadn't showed up at a military training course, and he was convicted. He was sentenced by the local court, where I did the defence litigation. After an appeal to the Supreme Court the sentence remained.

Mr Gaski's arguments were based upon both the Saami article in the constitution, article 27 in the UN International Covenant on Civil and Political Rights and an old convention between Sweden and Norway. Mr Gaski's arguments were that the Saamis in their tradition don't know of such a concept as armed defence, and including the Saamis historically was based upon the norwegianizing policy. He also argued that the Saamis live in four national states, and that it is hard to have the risk to shoot your own people. The third argument was that even nowadays the army has the effect of being norwegianizing. There is no Saami cultural expressions in the army such as Saami language, Saami clothing, Saami food etc. All these things should, according to Gaski lead to that he had the right as an individual to come to the courts and claim positive discrimination of himself as a Saami.

The Supreme Court based its dismissal on three arguments. The court considered that because of these three arguments, it wasn't necessary to give statements whether Gaski as an individual had rights according to the article. It wasn't necessary to give a statement whether this article established obligations for the court system as well. Neither was it necessary to state whether Gaski could have claimed positive discrimination. The first of these three arguments were that the Saami article wasn't meant to include the military service for the Saamis, army service wasn't explicitly mentioned in the preparing documents. The second argument was that Saamis had been doing their service since 1897 when the duty was established. The third argument was that the Saami organisations have never protested against the military draft before.

The interesting thing is that this **case** could be looked upon as a meeting between two **mythologies**. On the one hand we have the mythology of **reviving** an indigenous peoples' culture in the most solemn and obligating way. On the other hand you have the mythology of the armed defence that requires everyone to take part of the defence of the interests of the nation. The question after such a meeting would most probably be: what is left of the most solemn and obligating declaration?

The pessimist would say that the most solemn and obligating theatre is over. The Saamis got one more of the usual facecrackers from the Norwegian Supreme Court. He would focus on the fact that the Supreme Court explicitly stated that it is still an open question whether a Saami individual who wants to get positive discrimination can consider the article as legal at all. He would also focus on the fact that the Supreme Court required that the

military draft should have been explicitly mentioned if the court were to release Gaski. That requirement was formulated in spite of the fact that the discussion in the preparing documents is general. No particular area is explicitly mentioned. A case about education can pretty well be met by the same argument. The pessimist would call this a *catch 22*. The pessimist would also focus on that this 'since-1897' argument could be generalized to refer to anything. Our land was taken away from us by these times. If you can take our youngsters by that argument, you can walk away with anything. To the third argument the pessimist would say that the position of Saami organisations has never been considered as a legal source before this. The litigation was not prepared for that. The Nordic Saami youth organization has actually in 1983 given these question explicit statements. What do you do when a new legal source suddenly appears? Was that a torpedo?

The optimist would say that this was a very bad case to go to court with. The mythological connotations are too touchy to make it a good case for the Saami rights. He will say that it would have been a much better case to present if you had some educational questions. The best case would perhaps have been a case about establishing a museum for *Yoik*. The optimist would maybe say that father had a bad day this particular day. Father will regret, and treat you much softer next time you show up. The optimist would maybe say that father faced such bad litigators, but next time when the litigating is better...

A very positive case from the Norwegian administration moderates this rather pessimistic approach. The ministry of fisheries had made up maximum quotas for harvesting codfish. The regulation was strictly formal - every fisherman that hadn't been harvesting over a certain level of tons missed the right to harvest. The implications of this regulation were that many of the Saamis, who are small and not so industrialized fishermen lost their right to fish, and the legal question was whether the Saami article protected the Saami fishermen. Professor Carsten Smith was asked by the ministry to write an opinion, and based on that opinion the Saami fishermen could start to harvest again. In his opinion he answered that fishing was a Saami right. It was legal. The Saami fishermen had the right to be positively discriminated.

Another very positive thing is the legislation about the Saami language. The legislators have passed an act that gives legal protection to Saami languages. It is mainly whether a Saami can claim to communicate with the administration, the police, the courts in Saami language. The legal basis to that is the Saami article in the constitution. This is also an example of how obliged the legislators consider themselves to be by the Saami article.

My impression is that both the politicians and the bureaucrats in the administration are quite friendly and positive when it comes to exaggerate Saami rights. At the time I wouldn't invite a Saami rights party into the courts.

That is of course a problematic situation. It is in that party where all the legal songs and dances are basically performed. The court-party is also the party where the ordinary man meets the justice system. I am happy that we don't have a caste system in Norway. I guess the politicians and the bureaucrats are more dependant on the goodwill of the population in Oslo than the judges.

Where does the road lead? Even here it seems that the road is created while you are on your walk.

8. Some updates

Where are the land rights or are there any at all, you may ask. Since 1984 the Saami Rights Commission has almost been as the famous Godot. We had all been waiting, and we had started planning to celebrate the 10th anniversary of the 1984 report. I guess one of the reasons for that is that professor Carsten Smith went back to the university and then to become chief justice of the Supreme Court of Norway. The Commission has since then had one leader and now it has its third leader, Judge Tor Falck of the local court in Stjoerdal and Verdal.

At the end of 1993 an internal expert group for the Commission published a legal analysis of whether the Saamis in Finnmark should be considered as owners of the land. Secondly they asked whether Saamis in Finnmark had a legal protection to their traditional exploitation.

The conclusion to the ownership question was negative. The main argument was that so long time had passed since the declaration that this long time legalizes the ownership of the state. On the other hand some exploitations were considered as legally protected.

The expert group had dissent. One expert came to an opposite conclusion.

The majority of the group of experts have been criticized for not asking whether traditional Saami legal concept would be legally relevant. They have just stated that these wouldn't have 'weight' anyhow. The second thing that they have been criticized for is that they haven't analysed what implications international law could have to the question of ownership. Particularly ILO convention 169 has been focused on by the critics.

We are still waiting for the Saami Rights Commission itself to come out with its report. You may ask what happens meanwhile.

Rio Tinto Zinc Inc (RTZ), one of the largest mining companies in the world, has applied to the Norwegian government for permission to mine in a very central area in Finnmark. They got their permission. The Saami Parliament wasn't asked. The president of the Norwegian Saami Parliament, Ole Henrik Magga went up to the mountains and asked the mining company to leave. The company left, and they have also stated that they will respect the Saami Parliament.

What about the Alta project? That project did not become an economical success. The needs for electricity didn't turn out as expected by the government, and as confirmed by the Norwegian Supreme Court. The Norwegian prime minister admitted on TV that it had been a mistake to construct that project.

9. Concluding remarks

A main difference between our people and the north American Indians is that they got treaties and beads when they lost the land.

In Alta we lost our river, and we got the Saami Parliament and the Saami article. Are they pearls or beads? If they are, do beads have colours?

For example, we are positive about the Saami Parliament in that we have a representative body. But sometimes I ask what a representative body requires from us. And I also ask is it appropriate for our people to squeeze ourselves into a mini national-state concept. I understand that the natives in Canada argue that they are not a homogeneous group, and could therefore not be satisfied with a native Parliament. I realize that the

Parliament has square rooms and square papers and less *Yoik*, and my question is if that shall be our future path?

I have been mentioning optimists and pessimists several times during this presentation. I understand that I myself could be asked whether I myself belong to category A or B. First - I don't like categorization. Therefore I don't know whether I am a *Yoiker* or an academic or a reindeer herder or a salmon fisherman or something else. I could even be a society of all these strange individuals. If I were put under pressure to answer the A-or-B question I would answer that I don't know whether I should restrain myself as a pessimistic optimist or as an optimistic pessimist.

Notes

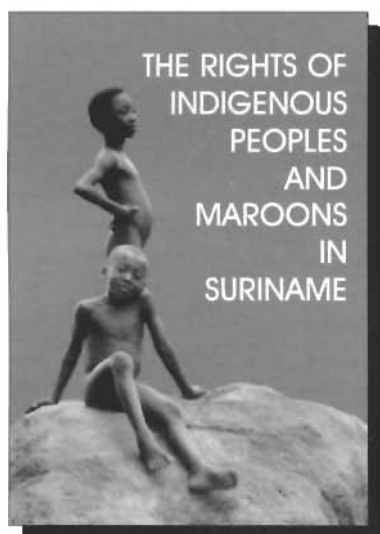
¹ Ande Somby is a post doctoral scholar in Law at Tromsø University. His doctoral thesis is about Rhetoric of Law. He comes from the mountains, but the river of life lead him to the university. After he got his law-degree, he has been working both in the Norwegian central administration, as an assistant-judge and as a litigating lawyer. Further information about him is available on his webpage: <http://www.jus.uit.no/ansatte/somby/>

² A poem by the Saami multiartist Nils-Aslak Valkeapää. Published in Norsk Retstidende 1982 p. 241



THE RIGHTS OF INDIGENOUS PEOPLES AND MAROONS IN SURINAME

By Ellen-Rose Kambel and Fergus MacKay



The book describes and analyses the Surinamese legal system as it relates to the rights of indigenous peoples and Maroons. The rights of these peoples have not been systematically addressed in this context before, nor have they ever been the subject of extensive academic research.

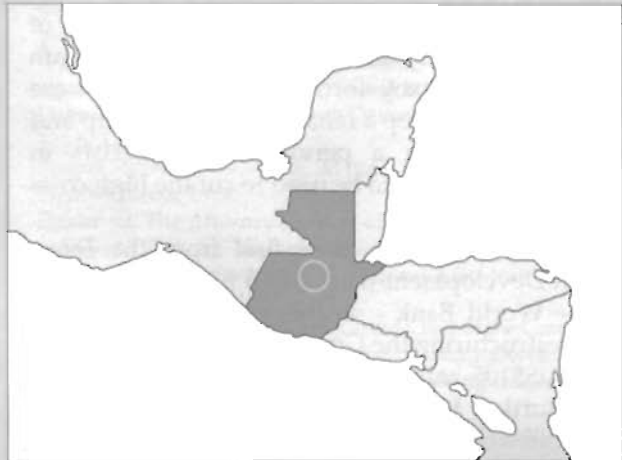
The book examines the manner by which Suriname came into being and the consequences of colonization. It also deals with the treaties concluded by the Dutch with indigenous peoples as well as Maroons. Legislation relating to land tenure and resource exploitation and conservation is examined in two chapters. The 1992 Peace Accord which ended the interior war of 1986-92 is also dealt with. The latter part of the book describes Constitutional guarantees and evaluates Suriname's obligations in the light of international human rights law. Finally the book outlines conclusions and recommendations for the future.

The book provides a good starting point for discussions on the rights of indigenous peoples and Maroons, hopefully leading to a full recognition of their rights in Suriname.

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GUATEMALA

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THE CHIXOY DAM: THE AYA ACHI GENOCIDE

THE STORY OF A FORCED RESETTLEMENT

by Jaroslava Colajacomo

More than 400 people have been victims of the violence related to the filling of the Chixoy dam in Guatemala. Some of them still remain unknown.

This updates the report 'Large-scale Dams, Peoples' Rights and the Environment: the cases of Yacyretá, Chixoy, Katse. The role of Italian TNCs, development aid, the World bank and governments' prepared by Reform the World Bank Campaign and presented to the International Indigenous Peoples Tribunal, that convened in Denver, Colorado, in June 1997. An analysis of the International Law and World Bank Directives violations concerning the Chixoy case was included in that report. The judgement delivered on Impregilo is attached to this study. On March 1999 the report was presented to the World Commission on Dams as a submission of Reform the World Bank Campaign and 41 Italian NGOs.

Special thanks for the collaboration should be addressed to Annie Bird of the US NGO Guatemala Partners (). Without her help the June 1999 on-the-spot mission that was carried out by the author should not have been so useful. Special thanks go also to Carlos Chen, Cristobal Osorio Sanchez, Jesu Tecu Osorio and Don Mario, Don Angel and Don Juliano from the Rio Negro community, and to Antonio Vasquez Xitumul from the Chicruz community for their testimonies and help, and to Lic. Louis David Alonso, Lic Mario Marroquin and Lic. Danilo Palma for their collaboration.

Most importantly, this report reflects the views of the Rio Negro community, with whose collaboration it has been produced. By means of a letter to the author, the community has endorsed the contents of the report.

Introduction

This paper mainly tells the history of the struggle of one indigenous group, the Maya Achi of Rio Negro in Guatemala, to survive the genocide connected to the decision of building the Chixoy dam in 1976 and to regain their previous standards of life; it also tries to identify the responsibilities, direct and indirect, of the government of Guatemala, funding institutions and building companies. It contains an analysis of how the interaction between the interests of TNCs, public funds and military goals, with various roles and degrees of responsibility, has generated not only a ruthless exploitation of natural resources and the marginalisation of local communities, but also their physical suppression and put at risk their present means of self subsistence.

The Chixoy hydro-electrical project was built during the military dictatorship in Guatemala and in the midst of a violent civil war fought between the army and armed opposition groups, a war that caused about 200,000 victims among civilians between 1980 and 1984. The construction of the dam was heavily affected by the war, the "tierra arrasada" strategy, and the "forced resettlement" policy adopted by the military junta of Rios Montt in order to

control guerrilla warfare in the country's inner areas by means of militarised "model villages". This work mainly considers the case of the Rio Negro community for the gravity of its social and environmental impacts, still widely present today, and the severity of violence and massacres involved. A mission conducted by the author in 1996 focused on the latest developments of this case and sketched some steps for the carrying on of the compensation process still under way, following new criteria.

The affected people: the Maya Achi of Rio Negro and their homeland

The Chixoy dam was built in the area where the Maya Achi indigenous group have lived for hundreds of years: the department of Alta and Baja Verapaz, a region which holds approximately 75,000 Achi-speaking Maya people. The largest community living along the banks of the Rio Chixoy river, in what would later become the dam basin, was that of Rio Negro, in the Rabinal department. Out of the 463 families, about 1500 people, officially recognised as affected by INDE (Guatemala National Institute of Electrification) in 1976, 150 were from Rio Negro, until 1981 the strongest group in terms of culture and with an entirely indigenous population.

In the late '70s, when the dam project was drawn up, the community numbered 791 people, according to a census taken by INDE in 1977¹. Each family farmed its own parcel of land and many of them raised horses and livestock (5 to 25 head of cattle), devoted themselves to fishing using traditional systems, and farmed corn, beans, tomatoes, chilly, oranges, mania and ayote along the wide river banks, the only fertile lands. There were also fruit trees, and Rio Negro inhabitants, women especially, were dedicated to the craft-made processing of palm materials and the production of fabrics that were sold on far away markets together with some agricultural products, by means of transport on horses and mules. They also had common lands for pasture and firewood and other natural resources.

Occasionally, some individuals from Rio Negro families joined the thousands of Guatemalan subsistence farmers as seasonal workers harvesting cotton, sugar or coffee on the large plantations on the country's Southern coast. There were no roads leading to Rio Negro. Rabinal, the nearest market, was at an eight hour walking distance, along a mountain path.

A first study made by INDE listed the "attachment shown by the involved communities to their region and land" among resettlement problems². The attachment that INDE referred to is due to the fact that, since the classic Maya age (330 AC to 900 DC), the area around the Chixoy river was inhabited by indigenous people who built up various ceremonial religious centers.

But the Rio Negro community was only one of the many affected. The basin was planned for 50 km along the river, including some tributaries (Carchela and Salama), and affecting around 3,445 people³ living along the river's embankments in the Rabinal, Cubulco, San Cristobal Verapaz and San Miguel Chicaj departments.

The funding of the dam and the private sector

In 1975 INDE, the Guatemala's National Institute of Electrification publicly announced the project of a dam to be built on Rio Chixoy north of Baja Verapaz, whose objective was to develop a reliable source of cheap and abundant energy. In a period of deep crisis in Guatemala, dams were to be used to cut the high costs of oil purchase.

Funding for the project came first from the Inter-American Development Bank (IDB) in 1976, and then from The World Bank - already involved for many years in restructuring the Guatemalan Energy Sector - in 1978: US\$105 million and US\$72 million respectively. A further 14 billion lira (about US\$8.7million) were allocated by Italian bilateral aid in 1992 - in favour of COGEFAR-Impresit - as aid credit for maintenance of the Chixoy hydro-electrical plant.

The consultant group contracted by INDE, Consorcio Lami, planned the building of four hydro-electric dams, for a total length of 155 km of the river and a submergence area of 6000 square km, to generate 550 MW. The first stage envisaged the construction of the 100 metre high Pueblo Viejo Dam, connected with a 26 km tunnel to drive the water to Quixal turbines (300MW). The engineering consortium, including Lahmeyer (Canada) and COGEFAR (then Impregilo-Italy) estimated the initial cost at US\$270 million, which would have soon been covered by the profit generated by the dam, saving the country US\$30-33 million in oil costs in the first year alone. Instead, after an earthquake in 1976 halted construction for 15 months, the cost was raised to US\$ 800 million (an increase of 300%), due to a re-design of the project because of the earthquake and complicated geology in the environmentally-fragile region. Ultimately, the total cost of the project was estimated to be more than US\$ 1 billion. The first dam was the only one to be built.

The basin flooded all the lands between 700 and 900 metres above sea level: 741 ranchos and 54 brick houses.

While the Rio Negro community owned 22,25 caballerias of inundated land (1 caballeria is 64 ha), 12 as private property and 10,25 as common land, not everyone belonging to the other communities owned farmland. In some cases the land management system was the

“colonato” meaning that they were farming the land of a private landlord receiving the rights to cultivate a little parcel for their own needs, as a salary.

Planning of the dam and beginning of the conflicts

The project completely disregarded the people displaced by the dam: no consultation with local indigenous peoples was envisaged or undertaken in the planning of the Chixoy dam that ended in 1975 and no meaningful information was given to them. Initial consultations took place only in 1976, after the dam construction had started. INDE representatives flew over Rio Negro by helicopter to inform people that a dam would be built and that the resulting reservoir would submerge their lands. Further contacts between INDE and local indigenous peoples took place in a climate of terror and intimidation. Rio Negro people were repeatedly threatened by INDE governmental representatives.

In 1980 INDE asked two representatives to go to its offices to claim their rights over the affected lands; the mutilated bodies of the two were later discovered and the document they were bringing as evidence of their ownership (Libro de Acta) was never found again. The initial problems between INDE, the government, the army and the people arose because from the beginning the Rio Negro population was opposing the relocation. Instead the mestizo community of Chicruz of the Cobulco department didn't adopt a similar attitude. According to Luis D. Alonso, a lawyer committed to the affected communities, the reason for this different behavior was due to the fact that *“the Rio Negro valley was the most fertile and well connected to the forests and their resources, the river and the upper Verapaz markets, where the people could trade handicrafts and food”*. Another major cause was related to the ethnic component of the population. The Rio Negro community, on which the work of education and awareness carried out by CUC (Coordinadora de Unidad Campesina) had a greater hold, didn't want to move to culturally different areas and areas. After long discussions, local communities elected a committee to negotiate the resettlement.

The initial documents by INDE significantly only mention people who had to be displaced, whereas in a feasibility study commissioned to Consortium Lami, only five lines are devoted to the assessment of the population living in the area: *“...the population in the zone is mainly indigenous ...in the area of the study there is almost no population, most of the population in this area live in the higher parts of nearby mountains”*³. In reality, as was pointed out above, the Rio Negro and other communities were mostly living along the river embankments.

The impact of development projects on indigenous peoples in Guatemala: the policy of “National Security and Development”.

The development projects launched by Guatemala since the 50s, and amidst the political debacle, always pursued economic development at the expense of social development, whereas programmes for a sustainable development were always opposed by the army. The production of electricity - part of the “two tracks” strategy supported by the USA strategy for Latin America (introduction of structural changes and support to local armies) - had a fivefold increase during this period since it was mainly due to public investments. In those years of strong militarization of the government many jobs, such as executive manager and administrative manager were assigned to members of the army; among them the direction of INDE was given to general José Oscar Sandoval Torres. In 1982, under Ríos Montt government the “National Plan for Security and Development” was presented. This plan foresaw in its actions three measures: 1. the “tierra arrasada” strategy used by the army on the civil population with the aim of eliminating all supports to revolutionary groups through the physical and collective elimination in neighbouring communities, generally mistaking indigenous farmers as guerrillas; 2. The construction of “Model villages” and “development poles” where people resettled or forced refugees were generally victims of the military campaigns of destruction; 3. The “Civil Defence Patrols” (PAC or death squads), submitted to forced recruit and with more than one million conscripts at the end of the 80s, more than 10% of the total Guatemalan population. In this framework of violence the Chixoy dam construction project was developed as part of the Integrated Development Plan of Baja Verapaz.

The Rio Negro struggle against the dam and the massacres

By 1976, 70 km of access roads had already been built to reach the site and the Chixoy Project officially began. Work continued until an earthquake delayed dam construction for 15 months and the project had to be modified. From June 1978, to avoid continuous increasing of the construction cost, it was deemed urgent to resettle the families living in the future basin, and the area was declared as “zone of national emergency”⁴.

Initially, INDE offered the Rio Negro people a possibility to move to two areas, but those proved to be located too far away. According to an INDE official, one of these two areas, Finca Primavera, conceived to host all the

communities of the Chixoy valley despite their different ethnic provenience and existing conflicts, was located on the northern side of Rio Chixoy in a remote area without water or fertile lands. At the end, the area chosen by INDE was located in Finca Pacux, close to the city of Rabinal; construction work began in 1978 and in 1980 Rio Negro residents could see what would later become their new homes. They didn't like it and decided to stay in Rio Negro: *"We didn't believe that man could really build such a huge dam to flood all our land, only God can do these things"*, later said a Rio Negro inhabitant.

During the construction of the Chixoy dam, gravel and sand were removed from land shared by the villages of Pajales, Rio Negro and Xococ. Following protests from the locals, US\$120,000 were given as compensation, but the money was divided unequally, causing conflicts among Rio Negro and Xococ communities. Internal conflicts due to the resettlement and compensation issues were not the only problem: the entire area felt the consequences of the civil war, then raging in the country. The Xococ inhabitants, that Luis Alonso described as *"the community with the most right-wing extremist approach who helped the army and cooperated with military secret services"*, started to report to the army that guerrilla people were present in Rio Negro. It was during this period that INDE began to denounce Rio Negro residents as being guerrillas and to act against them.

The intimidation campaign against the Maya Achi Indians began in 1980, following the community's refusal to move to the new settlements provided by INDE. In March 1980 seven people were killed during a meeting and in July 1980 the same fate befell two representatives who were going to claim titles to their land at INDE offices. In 1981, the Guatemalan government introduced Civil Defense Patrols (PACs), which became an armed network of community-based, counter-insurgency militias targeting community leaders, religious workers, development specialists, human rights workers, and others. Those opposing the dam were considered as part of the pro-guerrilla movement giving the Guatemalan government reasons for the massacres. In Xococ, a neighboring village to Rio Negro, a PAC was formed.

In February 1982, 73 men and women from Rio Negro were ordered to report to Xococ. According to what was reported by Rio Negro inhabitants they were subsequently slaughtered by the Xococ PAC, one of the most famous paramilitary task forces used by the government as a death squad, while according to Xococ inhabitants they were brought to the military headquarters and then disappeared.

In March, 70 women and 107 children were brought to the mountains at one hour walk from Rio Negro in a place traditionally known as Pacoxon and there they were raped and killed. Three women and some children succeeded to

escape whereas 18 children in working age were kidnapped and made slaves for many years, until they were freed (with the help of the catholic dioceses) and could relate what had happened. Before September of the same year, another 84 Rio Negro people were tortured and killed in Los Encuentros as were, subsequently, a further 35 orphans children in Agua Fria, another village in the vicinity, where they had found refuge after the Rio Negro massacres. Fifteen women were forced to board a helicopter and nobody still knows what has happened to them.⁷ Thus, prior to dam completion and the resettlement of local residents, between February and September 1982, the death squads and the army killed about 400 men, women and children from Rio Negro, during mass or individual massacres. The attacks were officially declared by the government as being counterinsurgency activities. Between September 1981 and August 1983, about 4-5 thousand people were killed in the Rabinal department⁷.

The filling of the basin began in January 1983 right after the final massacre. The people had to start moving away and the Rio Negro village was abandoned. They took refuge in the mountains and of them *"a non precised number of men, women and children died because of the forced transfer"*⁸. Some remained in the mountains for five years and only after the first amnesty, announced by General Mejia Victores in 1985, they started to walk towards their resettlement village, Pacux, escorted by the army.

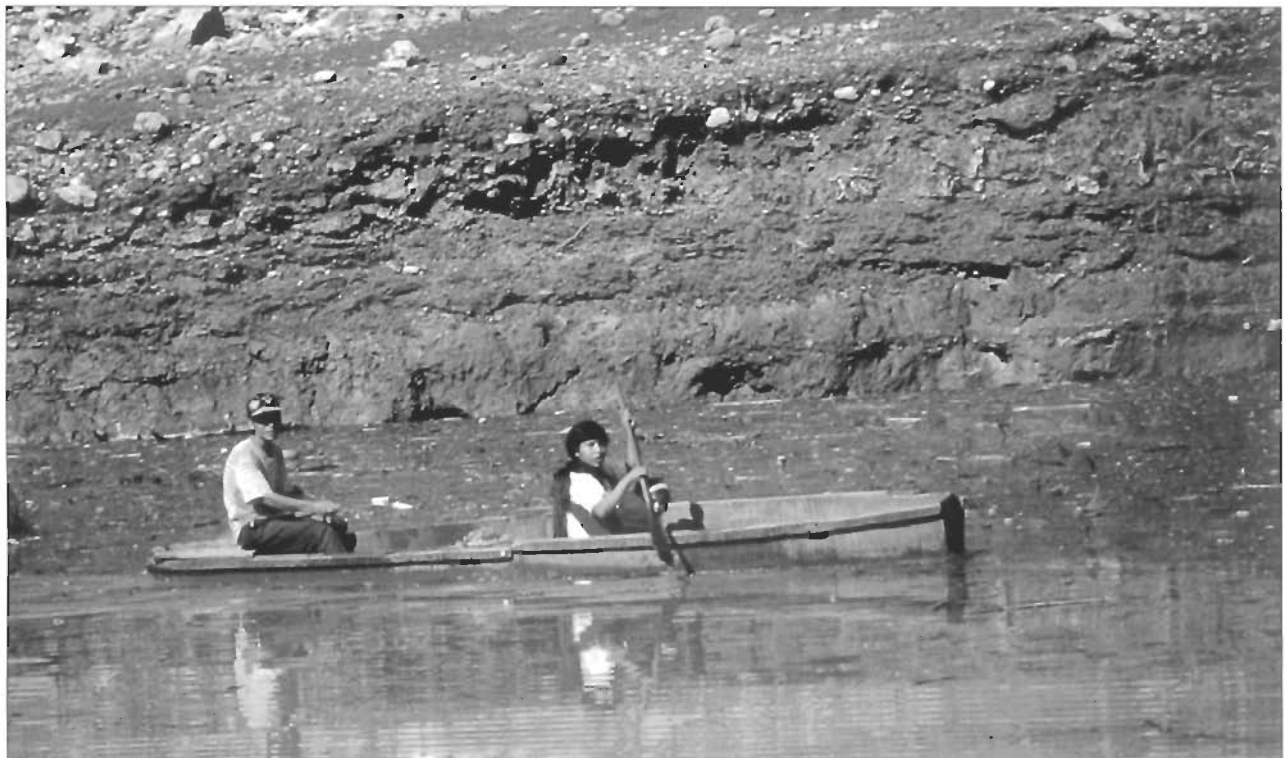
How the tragedy was addressed

For ten years after the worst repression, the Rio Negro community – like virtually all Guatemalans – kept a low profile and basically tried to get by. In 1992, they began to urge that the Rio Negro massacres should be remembered and the crimes committed against them and their families addressed. It was in the context of this initiated "confront-the-past" work that the surviving Rio Negro members, founded the Rio Negro Widows and Orphans Committee in 1993, which then became the Rabinal Widows and Orphans Committee in 1995.

The strong will of the victims of violence and survivors, in particular the widows' organizations, led to start the recovery of memory for the victims of the Rabinal massacres and of the rest of the country. The survivors began to speak out about the events and undertook efforts to have the events documented, such as exhuming the mass graves by a forensic team in November 1993. In January 1994, the bodies of 85 children and 58 women were unearthed in the secret cemetery of Rio Negro and in 1995 a new gravesite called Monument to the Truth was inaugurated. In 1996, they collaborated with a US-based organization Witness for Peace, which published a report *"A People Dammed: The Impacts of the World Bank Chixoy Hydroelectric Project in Guatemala"*.



Photos: Jaroslava Colajacomo



Justice was sought in several arenas, including the United Nations, the World Bank, and within Guatemala. The World Bank sent a mission to investigate, which recognized the massacres, but yet admitted no responsibility. Criminal suits were brought against military leaders in Guatemala. In November 1998, three Civil Patrol commanders were found guilty of the murder of three individuals killed during the massacres, but in February 1999 the verdict was annulled on appeal. The community is now demanding that new negotiations for compensation occur, considering the physical, psychological, cultural, and material losses. As of September 7, 1999, a second trial has been opened against the three Civil Patrollers and a Special Prosecutor has been appointed.

Also in February 1999, the United Nations-sponsored Commission for Historical Clarification concluded that in certain regions of the country the Army planned and carried out genocide (according to article 11 of the Convention on Genocide), classified the violence that occurred in Río Negro as genocide, and included the forced resettlement among the causes of elimination of the Río Negro community. In the face of still remarkably horrific conditions, the survivors have been able to have their experience – in terms of genocide, violence, loss of traditional livelihoods, and the poverty and instability that these create – verified and corroborated at high levels. They continue to push towards full achievement of commitments, justice, and restitution and are using new avenues and arenas, such as the Working Group on Indigenous Populations of the UN during its July 1999 session and the World Commission on Dams' public consultation held in San Paulo in August 1999.

The resettlement village of Pacux

The resettlement village was one of the "model villages" that the Guatemalan army had built to control guerrilla movements. A military base was located at the entrance of the village and constantly controlled the population. In 1985, three years after the filling of the basin, the resettlement in the Pacux village wasn't finished yet; only some hundred people out of the about 800 inhabitants of Río Negro had moved there⁹. As evidence of that, in December 1983, while pressing for extra funds from IDB to face some contingent expenses due to the repairing of the tunnel that had collapsed in some points, INDE Relocation Committee had to admit the failure of its resettlement program¹⁰. It was immediately clear that the economic situation of the resettled people in Pacux was worse than in their previous village: the Río Negro people, who had reached Pacux only with the clothes they were wearing since their houses had been burnt after the last massacre and all their goods - cattle included- had been stolen by PAC¹¹, found houses badly constructed and already damaged by the army, who had lived in them during the

first years. The situation was so dramatic that during the first years INDE had to distribute food to the resettled people. Being farmers, they could support themselves only by cultivating their land, but land was bought and given to them only later on and, at least two thirds of it, turned out to be unsuitable for farming.

The arrival in Pacux didn't put an end to violence: for some days, all men arriving at the village were seized, interrogated, mistreated and tortured by the army. Some of them were left without water and food for 12 days, after the hard life in the mountains, they did not survive the suffering and died¹². This situation lasted for many years. Pacux became a forced refuge for the victims of massacres made by the counterrevolutionary strategy more than a project of national development. Widows and orphans (about one hundred of them), still predominant in Pacux today, are good evidence of that.

The long suffering for compensation

Compensation for the families and communities damaged by the project were listed among the terms of the agreements signed with funding institutions. An executive body was created as a result of these agreements. It had to evaluate the compensations for lands, houses and crops that would be lost. At the beginning, the Inter-American Development Bank carried out the monitoring, and the Human Resettlement Program established by the multilateral body foresaw the purchase of lands equal to those flooded (the land should have the same or a better value, with woods for firewood and farming areas), the building of new houses and services in the traditional way, programs to improve craftsmanship, refunding for the loss of crops, actions to increase awareness and promote social and cultural development. In 1978 the World Bank took over. Its directives envisage the restoration of living standards and revenue generation capacities of displaced people, but this did not happen in the case of Chixoy. As we have seen, the village was inhospitable, housing badly built. Electricity and water supply were provided, but up to today the supply was at best sporadic (moreover people will soon have to pay for them).

On the land problem, in 1976 INDE measured the lands to be flooded with the help of the Committee for National Reconstruction - a body established after the earthquake of 1976 and made up prevalently by military people - and estimated that the number of families involved would be 150. Without consultations, INDE decided to give 3 hectares to each family directly damaged and 2 hectares to those damaged indirectly. But in 1980 the papers proving the ownership of the lands disappeared. The three fincas in Rabinal (Pantulul, Corralabaj and Corral Viejo) were bought only some years later for a total of about 122 hectares out of the 450 envisaged. The treeless land was inadequate for the resident population and the majority of

it could not be used for farming because of poor quality, rocky and steep terrain and no water availability.

In 1983, while the majority of survivors were still on the mountains, INDE took a new census and dropped the number of families to be compensated to 106. From that moment on, INDE considered this new figure as the number of families to compensate whereas the Rio Negro people always claimed that the figure was not correct since INDE did not acknowledge the heirs of those families completely destroyed during the massacres and that could not assert their rights. Besides, the "new families" formed by those who were not of age at the time of flooding but who formed a family soon afterwards were not considered, although they needed lands and a house. In 1984, when the 150 houses had just been built, the army came to pull down those in excess. People were threatened not to dare to put up other members of their community. As for the compensation or restoration of farming and land assets, problems started since the feasibility study done by LAMI in 1974. Under the agriculture section (only 11 lines) we read: *"there is no important agricultural development along the river... agricultural utilization increases on the higher and flatter parts of the hills"*. In reality, for decades Maya Achi communities had cultivated the embankments of the river leaving the upper part of the hills to sheep farming.

At the beginning of its works, in the 70s, INDE promised well paid and long-term jobs to people, but they only obtained a maximum of 15 periods of 15 days to build the resettlement houses. Sometimes they were paid with "food for work", 2 pounds of corn every two weeks. Besides, only 340 workers from Rio Negro - out of the 800 promised¹³ - really received a contract to finish the construction, whereas corruption rapidly spread. Many people not damaged by the dam were in fact hired in the sites. According to Mr. Mario Marroquin of the World Bank Mission in Guatemala City, *"In 1984, the World Bank granted the second loan to the government of Guatemala, without evaluating the use of the previous loan and the conditions of the affected people, although the institution already had clear policies on resettlement and respect of human rights"*.¹⁴

The Present Situation

From 1984 to 1996, the issue of compensation for Chixoy resettled people was completely forgotten. Only in July 1996, after denunciations from Witness for Peace¹⁵, did the World Bank carry out an on-site investigation¹⁶ which concluded that local people were never adequately compensated and urged the purchase of more land. In 1995, INDE, pressed by the Pastoral Social of Coban, created another Commission for Human Resettlement for the payment of compensations, but only the intervention of the World Bank gave a new start to the process. Through the mediation of the Catholic Diocese of Verapaz, and of the World Bank, the Pacux community negotiated with

INDE the compensations that were agreed with the Guatemalan government 16 years earlier (in 1980), in particular those on property titles, money compensation and the purchase of new land. The sums given for the loss of crops were the first to come but their amount was ridiculous: 500 quetzal (about US\$ 50) for 3 hectares of land per family while the real value would have been at least ten times as much. INDE considered the rates of 1978 as point of reference for the negotiation.

INDE, the State energy company, was at this stage in extremely difficult circumstances and the World Bank, following the on-site investigation in 1996, expressed doubts that outstanding requests, in particular for the purchase of lands, could be fulfilled. In 1997 INDE had only 250,000 quetzal (about US\$ 25,000) to buy a new finca (farm) but market prices were twice as much. Later on the situation became even worse as INDE could pay only 1,000 quetzal per hectare for land carrying a market price of 10,000 quetzal per hectare. The World Bank had to negotiate with FONAPAZ (National Fund for Peace) the commitment for the missing land. In 1998 INDE was then privatised.

On 19 January 1999, with FONAPAZ money, a new finca was bought in the municipality of Coban, Alta Verapaz, at about 8 hours drive from Rabinal. As of September 1999 property titles for the new land have been assigned, but not yet handed out delivered, to 62 Rio Negro families. Most importantly, the land handed out as compensation in the past face the same legal situation. The new finca, called Sahomax Yalchacti, is made up of 320 hectares of farming land with a well settled production of cardamom and good perspectives for the starting of new crops but it lacks facilities for living on it and cultivating it. Rio Negro people had to wait twenty years also to receive property titles for their houses. Only in 1999, when 80 titles were assigned, the number of people who received them reached 146. The process of legalization was further complicated because INDE did not acknowledge 44 families whose recipients had died or had disappeared at the time of violence and for whom it was necessary to set up a process of presumed death acknowledgement that lasted two years.

The Situation in Cubulco: Some Hints

In 1989 the 189 families of Cubulco, who had lost 16 caballerias of fertile lands, were resettled in El Naranjo Colony, built after Pacux. They received 8 fincas, the largest of which, Chitocoy, was 6 caballerias. Seventy families remained in Chicruz (the largest community flooded in the municipality) and ten in San Juan. These communities and other seven that were located above the line of maximum filling of the basin are now completely isolated. The only wooden bridge built two years ago was pulled down by hurricane Mitch and was never rebuilt. At

the time of negotiations with INDE, the construction of another colony - Chicuxtin -, for which land had been bought, was envisaged. Only in 1999, and thanks to the intervention of the World Bank, did FONAPAZ start to build 65 houses destined to "new families" in Chicuxtin, but the work is still under way ¹⁷.

The Unfinished Process: the INDE and World Bank commitments on compensation

Since the process of compensation was reopened, the criteria adopted were limited to the completion of what INDE had imposed to local communities in 1980, in a climax of terror and not of consultation or negotiation. The target was to give to all families titles to three hectares of land, titles on houses and some payment for lost crops. A short-term target with a limited compensation value that did not take into account the real needs at the time of relocation and new needs caused by the resettlement of the communities. Are three hectares of land (desert and without water) enough to support a family? What do the titles of individual property mean to a Maya Achi? Can compensation money compensate for the sacredness of lands and the loss of a larger area where they used to collect firewood, fruits and medicinal herbs? Besides that, not all the commitments have been fulfilled:

1. There are no houses in the new finca and FONAPAZ committed itself only to build the floor and the roof. Drinking water, electricity and health services are lacking. Due to its location far from Rabinal, an increase of value for the land is unthinkable without these housing requirements. Besides, an agronomic project on the new finca started by the community was suspended since a map of the land is still unavailable.
2. In Pacux, 4 houses are still lacking titles and the titles for the farming land (included the new finca) have not yet been delivered to the families. The social structures, a school and a health centre have not yet been delivered to the local entities charged for their management.
3. 44 families, although acknowledged as legal heirs for the housing issue, haven't yet received any farming land and survive thanks to the solidarity of the other members of the community.
4. The three finca of Rabinal do not have sufficient land for its 46 legal owners: each family only owns 2.6 hectares. The fincas are short of 16 ha.
5. In Cubulco, titles for Chicuxtin houses have not been delivered and the situation concerning titles on farming land is the same as in Pacux.

In spite of this in July 1999 experts very close to the World Bank believed that almost all relocated communities had reached the level they had in 1976 or were almost about to reach it. After having restarted and strongly supported the

compensation process for two years, the World Bank officials in Guatemala now consider the compensation process, agreed with INDE in 1980, as ended with the fulfillment of the resettlement needs and payment of compensation to affected communities from the Chixoy river basin.

Moreover, during some meetings held by the author with WB representatives, a discriminating and trustless approach towards the self-management and cooperation of the Rio Negro people relocated in Pacux emerged. In the rebuilding of events, it's in fact said that those living in Pacux "...did not cooperate with INDE in the selection of new lands" and for this reason they got lands of bad quality, and that "those now claiming the non fulfillment of compensation.....omitted important initiatives in crucial moments..."¹⁸. This refers to the 44 families living in Pacux that were excluded from land compensations and anyway decided not to move to Alta Verapaz, and that after the massacres of 1982 had decided not to cooperate (with INDE and the army) to look for new lands. In the light of the cultural eradication and violence described above, these considerations seem - to say the least - shallow considerations. The case of the 44 families who did not receive compensations is very serious: the World Bank considered it a fraud attempt from the Rio Negro people who arbitrarily increased the number of heirs of people died in massacres. The responsibility for the lack of property titles, officially acknowledged by the government, must be with INDE, which in 1980 stole them by deception and afterwards "lost" them. This made it impossible for a long time to identify the number of people to whom compensation was due. In 1996, however, the World Bank acknowledged the process of recovery of the rights of these families to houses.

There is also another issue remained addressed due to the lack of support to the Rio Negro community: before the dam project started the community could claim ancestral rights, shared with the other communities of Pajales and Xococ, of usage on another farm, Finca Pajales. Recently, however, the lack of legal and financial support forced the Rio Negro community to give up their participation in the legal assignment of acknowledged rights on this land. Due to the lack of competence and means of transport to reach the place of negotiation, they have probably lost the possibility of asserting legitimate claims on it.

The process not undertaken: the need for new criteria

One of the first promises, forgotten by INDE at the time of resettlement and now by the World Bank and FONAPAZ, was that the land assigned to affected people had to be of the same quality and quantity of that lost. This is also foreseen in the WB directives on resettlement (OD 4.30) and indigenous people (OD 4.20) and in the ILO Convention 169, signed by Guatemala in 1996. As for the

quantity, the Rio Negro people have so far obtained only 7 caballerias against the 22.5 caballerias of flooded land, that is, less than one third. All fincas bought so far are located very far from these people's native land, both in Pacux and in Colonia El Naranjo, and there is no water for irrigation. This creates problems such as loss of working hours for farming and difficulties in continuing traditional activities. The issue of population growth was not taken into account: more than 170 families now live in Pacux, but there are only 150 houses and there is no land available to build new ones. In many cases three or four families must share a house of few square meters. In the future the situation is due to worsen.

In 1981 INDE made a study on the type of housing used by communities living along the river, but only the people of Carchelà were resettled in a traditional type of housing. The other communities were given radically different houses, designed for an urban environment and placed one after the other with no room for animals, had concrete floors with no foundations and a flat roof. No common places were foreseen for open-air meetings, for ceremonies, animals or the common fireplace. In Pacux, houses are in advanced decaying condition since they were built utilizing poor techniques and materials.

The impacts of the Chixoy project on culture, socio-economic structures and health of the Maya Achi communities as well as the environmental and territorial damages were not taken into consideration. The affected local communities have therefore been trying to widen the framework of what was considered "damage" until today and develop other wider criteria. Some of these criteria are included in the conclusions and recommendation.

Cultural changes and socio-economic losses

The Chixoy dam is located in a remote area of Guatemala, where contacts between the local population and the rest of the country were occasional. The closest village was at a several hours walking distance from communities living in the Maya Achi area. Dam construction led to more frequent contacts with Spanish speaking communities, the "ladinos", and to the necessity to adapt traditional social organisation. For example people's representatives had to be appointed to interact with governmental officials in charge of managing dam construction and resettlement. The most important damage not considered in the compensation process is perhaps the destruction of social structures and the culture of the community.

As elsewhere in Guatemala, the Rio Negro massacres aimed at depriving the ethnical and cultural groups of their mechanisms of continuity: all elderly people were killed, and they were those who knew and handed down basic religious and cultural practices. Today the survivors find it hard to remember and rebuild their traditions: playing the marimba; dancing the "baile costeño" and the religious

syncretism like the candle ritual; furthermore, they haven't got enough money to prepare these rituals with the help of people outside their community. They have also lost all their internal capacities of conflict resolution. All medicinal plants growing along the river were lost due to the dam construction and the two Maya priests of the community as well as those who knew traditional healing systems were killed.

A Dominican priest living in Salvador is the only repository of the memoirs these people can be still proud of: some photographs of children swimming and fishing, community people before the massacres and traditional houses taken before the village was abandoned. The Widows' Coordination of Pacux organization is now trying to start a museum among many difficulties. In the early 80's a mission of French archaeologists, contracted by INDE, and leaded by Mr. Ychon, started excavations in the Pueblo Viejo area with the purpose of digging out archaeological objects from the areas that were to be submerged. In this case too, the local population was not consulted and felt the presence of the archaeologists to be an invasion and the excavations a robbery of their cultural heritage, although some Rio Negro workers had been hired for the excavations. The archeological commission took many precious items (Maya statues, jewels etc.) and the local people never had them back.¹⁹

Among the archeological losses were also the Cahuinal site in Cubulco, with its religious temples where communities went to pray, the Pelota playing field, more than 150 other buildings and other 16 Mayan ceremonial sites. Every year, during the dry season, Cahuinal emerges and today, after 17 years, the irreparable signs of its deterioration are evident. In a 1982 survey on the Chixoy impacts, INDE stated that "*although some archaeological sites are to be flooded, this will be compensated by the survey made, since it will enrich the knowledge of national heritage*"²⁰. Nobody from the Rio Negro community could make use of this survey.

The substantial negative impact caused by this project (with the loss of traditional economies, lands and housing) makes it now almost impossible for the affected communities to satisfy their primary needs. It also provoked the disintegration of their complex and delicate system of traditional and cultural internal regulation (loss of traditional law, of the role of the chief and of access to places of symbolic and religious importance). In this context, the loss of land, as a consequence of forced resettlement policies, is of crucial significance. When indigenous peoples are involved, some of the negative impacts are rendered even more serious due to the particular relationship that such people have with their land and the environment in which they have lived for generations. The threat to their survival is further worsened by the lack of consideration given to their

vulnerability to "development" mechanisms. In the case examined here, studies on social and anthropological impact either do not exist or have not been published even though, according to a World Bank directive, such studies must be carried out when the problem of resettlement of indigenous peoples has to be tackled. Social impacts are linked with others, frequently irreversible, on health, the environment and food availability. Now local people cannot manage or have direct access to natural resources, thus affecting their living conditions and the wider environment.

From a cultural point of view, the compensation process reopened in 1996 could even make the situation worse: the new finca is located in a different ethnic area, a Kekchì area, where people speak a language the Maya Achì cannot understand. For this reason it is normal that only a few of them have accepted to move there. After the dam caused their forced transfer to inhospitable lands for twenty years, now the survivors of the 1982 massacres are forced to move to faraway lands to restart their life. The subsistence economy has, starting from 1982, very much deteriorated. There are no working opportunities in the area and men are forced to migrate to work in large plantations. Sometimes whole families migrate to the South for seasonal work, with all the problems that seasonal migration involves - a change of climate, working conditions, family disintegration. It also seems that the most attractive work for young people from Pacux at the moment is three-year army service, where they get clothes, housing, food, and are paid \$60 a month. By a twist of fate, the sons of those who died during the massacres of the early '80s are now becoming part of the military system.

In the following paragraph, the comparison between life in the old site and in Pacux will better clarify the changes brought about by the forced relocation process to traditional economies. This kind of loss was not taken into account in the compensation process.

The new Rio Negro

In 1991 three families frustrated with the living conditions in Pacux have returned to their ancestral home and have started to live in straw and nylon huts. To go back to Rio Negro was not easy. In 1989, when they started to sporadically return to the area, they needed a temporary permit by the military commander even for fishing and remaining in the area for a short time. After that 18 families came to live in the area. Only 12 of them are there today, but a greater number of those living in Pacux have now taken the habit of walking monthly to Rio Negro (height hour walk) to supply themselves with what they were used to and/or they cannot buy: fish, palm trees, ocote (pinewood used for setting fires) and cal (lime to cook corn). In the village they fish, hunt and cultivate the small land available on the new desert river banks. In the "new Rio

Negro" life is difficult: food and farming lands are scanty, there are no close sanitary services and people have only one launch for their travels (out of the 12 promised by INDE). For this reason, the trade of palm and the other few products left, that once took place at least twice a week, now take place only once a week. The closest market to reach on foot is Xococ, four hours walk away, and the closest hospital is in Coban, six hours away. Along the river, everyone had his fishing net, but in the artificial basin - where there is only stagnant water - more sophisticated techniques, for which not everybody is equipped or can buy the necessary equipment, is required.

Despite these conditions, they prefer it to Pacux, says Don Juliano, the first to come back here, "where there was no room to keep animals, to farm or to light a common fire, where firewood and all other needed things must be bought". But the dream of coming all back here remains a utopia, since "there wouldn't be enough room and land for everybody". Electricity came just in May 1999 with the installation of solar panels donated by a private company; some components of the solar panels, however, will have to be replaced in five years and no funding is currently available for that. Only one year ago did they obtain roofs for their houses and a school, with the help of Coban Pastoral Social. "

Environmental and health impacts

Neither the World Bank nor INDE have ever carried out environmental impact assessments or protection plans. The consequences are now affecting the local environment and the functioning of the dam. During the feasibility study, "no consideration was given to the possible use of other types of energy such as solar or geothermal"²¹. Information available indicates that the banks of the reservoir have been heavily deforested and transformed into a desert due to the fragility of the terrain that continues to slide down into the basin. A number of attempts to replant trees have been unsuccessful, perhaps because they came too late (started in 1991). Moreover only \$ 1.5 million was set aside for environmental conservation efforts.

The majority of flooded land was of "ejidal" type, land destined to common use for sowing, pasture and firewood and for other products used by the community; but people did not hold property titles. The right to this common land has been lost and has not been compensated with the delimitation of protected areas for the benefit of affected people, as it is foreseen in the World Bank's directives on environmental impact assessment on indigenous people and applied in other cases of dams funded by the World Bank.

Relocation has caused worsened living conditions for local communities and the quality of their nutrition. This can be considered as a direct impact of the dam, although the effects are felt at a certain distance from the reservoir. In Pacux the housing situation has worsened and food

production on lands of limited size and poor fertility had lead to a state of chronic undernourishment. The health centre built by INDE is unfit for use: soon after its construction, it lacked medical staff and medicines.

Was the dam useful? Its impact on the Guatemala economy

The power plant started operating after the reservoir was filled in 1983. However, it was shut down five months later because it was feared that the tunnel carrying water from the reservoir to the plant was about to collapse. The dam was reopened after maintenance work in 1985, but the plant has never operated at more than 70% of its expected capacity. Maintenance costs are higher than planned and additional technical problems have required additional maintenance work. In 1990, with funds received from the Italian government, COGEFAR built an additional tunnel to alleviate the weight of the main tunnel and avoid further collapses. As regards to the basin, sedimentation is higher than expected and the reservoir is likely to be filled with debris in the coming future. These factors contribute to shortening the dam's life: according to some sources it will not last for more than 20 years. In some areas north of the basin, sedimentation has reached 100% of live storage and is fast reaching the area at the entrance of the dam tunnel. This critical area of the dam, which represents the depth of the basin in front of the tunnel (which takes in the water to produce electricity), was at about 100 m. depth when the dam started operation, but was only at 70 m. depth in 1996.

The dam has turned out to be a financial disaster, since it does not cover the country's energy needs. *"By the time INDE solicited the 1978 loan, the WB had already invested 18 years and \$77 millions in Guatemala's hydro-electrification, with little success up to the point"*²². Although dependence on oil has decreased, Guatemala still spends US\$ 150 million a year to produce electricity. Every year a minimum of US\$ 8 million are spent on structural maintenance costs of the Chixoy project, and only when fully operating does it cover about 50-60% of the country's needs. Energy costs supported by the population have constantly increased during the last few years, but still only 30% of the population benefit from electric power. Moreover, the dam works in a very discontinuous way: in summer the energy demand is not sufficient to cover the total supply of the country and so the Chixoy power is not used. In summer 1997, the power produced had to be sold to El Salvador. That same year, a "sectorial door" (which increases the height of the dam) was built to improve the storage of water during the rainy season, water that had been lost until then, reducing the so-called "live storage" of the basin, perhaps due to sedimentation rates.

The final cost of the project has not yet been clearly defined. Evaluations range from US\$1.2 billion (521% higher than

predicted) to US\$2.5 billion. These variations are explained with technical causes that delayed and modified the project and the devaluation of the quetzal but it's mostly corruption that played a crucial role. Various sources estimate that between US\$300 and US\$500 million dollars were lost to corruption on this project. *"The dam was the biggest gold mine the crooked generals ever had,"* according to Rafael Bolaños, dean of the School of Civil Engineering at Guatemala's San Carlos University. Because of the dam, the country's national debt has increased substantially, with the population paying the real costs of the whole operation. INDE incurred a US\$40 million debt. As of 1991, INDE's debt accounted for 45% of Guatemala's foreign debt. Meanwhile electricity prices have increased, in part to pay for the debt of this project.

Conclusions

The relationship between dam construction and violence: the charge of genocide

Violence in this region was almost non existent before dam construction began in 1977.

Those actions that the army defined as "counterinsurgency measures" are not justified by the presence of guerrillas in the area, a presence that wasn't very consistent before 1980, as confirmed in the "Guatemala Nunca Mas" survey of 1998²³. According to this survey there was concomitance between the beginning of the army's individual reprisals in 1979 and *"the forced transfer of some Chixoy communities, where a dam was being built"*. There are many facts, testimonies and documents proving the link between violence and the aim of getting rid of the more reluctant Rio Negro inhabitants to allow the filling of the basin. Survivors and other witnesses note that INDE knew about and collaborated in the violence against Río Negro because the people refused to leave the village.

This is also shown by the compensation policy adopted by INDE, which during the first years compensated only those communities who did not oppose their relocation: lands given by INDE to Carchelà communities relocated in the Finca San Antonio and Italy in San Cristobal Verapaz and those given to Chicrus communities in Cubulco were the best ones: two hectares of fertile land per family since the beginning. Compensations in the Rabinal valley were instead the worst. At that time, one of the people responsible for the resettlement project stated that " the houses in Colonia el Naranjo were of different quality than those in Pacux".

The logic of the government in the selection of new lands for compensations was not determined by the farmers' needs but by security needs of counterinsurgency and the communities were moved to the so-called "polos de desarrollo" or "aldea modelo". Pacux in Rabinal and El

Naranjo in Cubulco were part of this strategy and were built close to urban settlements where supervision was more effective. Rio Negro people can be considered as forced emigrants resettled in Pacux, forced to emigrate by both the filling of the basin and the violence. The first organization to start questioning the relation between resettlement and violence was the US based Witness for Peace, whose 1996 report highlights that: *"although the massacres were attributed to the counterinsurgency war, a careful analysis of the Rio Negro events leads to the conclusion that local residents were killed because they blocked the progress of the Chixoy project... Many sources support this view"*²⁴.

At last, in February 1998, the Commission for Investigation of the Past (Comisión de Esclarecimiento Histórico, CEH) created after the peace agreement of December 1996 to make clear the truth on massacres of Guatemalan people during the civil war, classified the violence occurred in Rio Negro as genocide in compliance with art. 11 of the Convention on Genocide. In this process of event reconstruction, the CEH has significantly included the forced resettlement among the voluntary causes of elimination of the Rio Negro community and concluded that *"the actions directed to the massacre of all women and children on March 13 1982, the arbitrary executions of other members of the community after the massacre and the creation of living conditions that led to the death of the survivors, as it happened with the forced resettlement, show the intention of the army's high command to destroy completely or partially the above mentioned community... which is a deed of genocide"*²⁵. According to CEH, this case is a clear example of how *"the civil population who was not part of the conflict was involved... due to the fact that many attitudes of resistance to administrative decisions, although they were peaceful manifestations, as in the case of the dam construction, were considered beforehand as instigated by guerrillas and solved through violent repression"*²⁶. Among the testimonies collected by the CEH, a legal consultant of INDE, in reference to the communities, stated that *"the use of force was necessary to move those who did not want to negotiate"*. As we saw above, INDE took advantage of the violence occurred to deny compensations to local people for their losses and did not fulfil the commitments undertaken with the international funding institution: in 1984, the Unidad de Reasentamientos had used only 5 million quetzals, whereas the amount foreseen was 40 million quetzals. The government later acknowledged that funds were misused and partly financed counterinsurgency policies.

Domestic and international responsibilities

The Guatemalan government has been financed for the Chixoy dam with funds from the World Bank, the Inter-American Development Bank and, among others the Italian Bilateral Aid. The responsibility of the Guatemalan government and INDE for the problems linked to forced

resettlement and genocide was deemed absolute. The idea that the dam was an element of progress was based on the intentional denial of cultural and social differences, if not on an ideology of mere cultural homogenisation and took its roots in the "safety and development" ideology brought by the government at that time.

The Chixoy dam damaged and impoverished local communities and enriched multinational building companies and local political élites. In the light of the above the responsibility of multinational companies and the World Bank in the Maya Achì resettlement and genocide may be more or less categorical. There is no concrete evidence of their direct responsibility but there are enough elements to conclude that the companies involved and the World Bank acted somehow as witnesses of, and catalysts (by lending) for, the violations of the human and environmental rights reported in this paper.

The responsibility of TNCs goes far beyond the cultural aspects described above, or the physical building of the dam and the lobbying activities aimed at securing support from the World Bank and local governments. The environmental impact assessments of the project have been actually non-existent. An evaluation of the environmental impact both in the area and downstream was not conducted by Consorcio Lami. The poor evaluation of the reservoir-induced seismicity is a significant case in point. In Chixoy, a seismic area, the government of Guatemala and the consortium controlled by COGEFAR (then IMPREGILO) continued to build the dam, even after two years of interruptions due to earthquakes. Furthermore, Italian bilateral aid provided funding for related infrastructures. Data related to cost effectiveness and economic feasibility were overestimated while data such as water inflow requirements or the impact of sedimentation on the economic soundness of the project were generally grossly underestimated.

In Guatemala, the Chixoy dam was blocked for two years because of high costs that increased by 300% for the construction stage alone; the Guatemalan energy utility INDE had to buy fuel to generate power thus creating a large foreign debt. However, the Bank and the Italian bilateral aid continued to fund the dam. The World Bank can also be charged of not monitoring in an adequate way the use of the loan between 1978 and 1996. According to some testimonies, in 1982 a World Bank representative arrived in Rabinal but never reached Rio Negro since "the area was under the control of the guerrillas". Despite a lack of evaluation on resettlement²⁷, massacres and evidence of corruption²⁸, the World Bank and the Interamerican Development Bank continued to finance the project, ignoring all references to the events mentioned in their reports and documents²⁹. Events that were well known to them as many witnesses stated. On 1985, after only three years since the massacres had happened, the World Bank

gave another loan of US\$44.6 million. In 1981 IDB gave another US\$70 million. Moreover, there is evidence that INDE was aware of the massacres and minimized the importance of those events; more likely, it encouraged the army and PAC to eliminate the obstacle represented by the organized Rio Negro communities³⁰.

In 1996 the World Bank acknowledged the massacres of the civilian population that occurred in 1982, but still denied any responsibility or knowledge of the situation at the time of the events: "in 1982, the year of the massacres, neither the Bank nor other observers knew the extent of the violence and terror that were occurring in Rabinal, nor did the Bank associate the violence, of which it had only general and limited knowledge, with resettlement activities"³¹. The reason given for the massacres was "internal problems" in Guatemala. All this happened twenty years after the start of the project and only after the publication of the Witness for Peace Report. It's still to be understood how, in a time of so many massacres and resettlement problems, companies working at the dam and the funding institutions monitoring its progress did not realize what was happening. Local testimonies said that a COGEFAR lorry was used by the army for the massacre in Los Encuentros in May 1982 and that the 15 women kidnapped by helicopter were taken from Pueblo Viejo, where the dam building site was located.

Responsibilities in the light of international law³²

While identifying responsibilities in the light of International Law and regulations the charge is explicit; the responsible parties for the project (the World Bank, Guatemalan government, TNCs) have directly or indirectly violated the rights of people living in the area of the dam. The most important violations have been committed against their rights to be consulted on and to participate in the decision making process, the right not to be forcibly displaced, to benefit from activities that take place on their lands and to fair compensation for their losses. Violations were also committed against their right to information on health and environmental risks and, against their ethnic and cultural rights and above all the violation of the right to life as set forth in the 1948 Convention on Prevention of Genocide and its Additional Protocols³³, which broaden the range of actions considered as crimes by the Convention on Genocide, including therein the destruction of traditional or cultural self-reproduction of an ethnic group.

These violations have also infringed upon international treaties protecting collective (ethnic, economic and cultural rights including the right to development) and environmental rights, such as the Universal Declaration of Human Rights, the ILO 169 Convention on Indigenous and Tribal Peoples' Rights, Agenda 21, the Convention on Biodiversity, and the WHO Statute. Particular attention

should be given to violations of World Bank's internal regulations on resettlement (OP 4.30) and indigenous peoples (OP 4.20).

Particularly serious has been the lack of an Environmental Impact Assessment (EIA) at the feasibility stage of the project and before any further World Bank funding to the government of Guatemala. According to the ILO Convention 169, the sole international legal instrument protecting indigenous peoples, recently signed by Guatemala, all indigenous peoples forced to move from their land or territory have the right to equivalent land or territory: "*they shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development*" (art. 16). According to the ILO, the word 'territory' means "*the total environment of the areas which the peoples concerned occupy or otherwise use*" (art. 13), although people have no titles but some right of usage or usufruct has been established on the land (art.14).

Recommendations

The Rio Negro community considers as uncompleted the compensation process reopened in 1996 as the damages suffered due to forced resettlement and violence, which were inter-linked, were not compensated in any way. This paper has listed the elements of compensation still not completed according to what INDE promised in the early 80s. But, as highlighted, even the fulfillment of INDE's promises would not repay all the environmental and cultural losses. Moreover, the quantity and quality of land given as compensation do not replace the land lost.

However, attention should not only be given to the impacts in the reservoir area; impacts on the ecosystems and on people living in a zone upstream and downstream of the basin should also be taken into account. The main value of a critical survey lies in its effort to clarify the size and range of those impacts that occurred and those that may occur in the future. Funding and planning organizations lacked and still lack this type of analysis.

In this context "Compensation" for the genocide is a matter that requires special consideration. The CEH made a formal request for the establishment of a National Program for Compensations to Victims that should include "*individual or collective measures inspired to principles of equity, social participation and respect of cultural identity*" among which we can find: return of what was lost to reestablish, if possible, the situation existing before the violations, especially in the case of land; repayment for the most serious damages and prejudices; rehabilitation and psycho-social reparation.

The cultural eradication of the group, its psychological instability deriving from a sense of uncertainty linked to

resettlement and to violence, the loss of food self-sufficiency, the conflicts with neighboring communities, and the loss of traditional economies and working opportunities for about twenty years, should be taken into account when dealing with compensation to the Rio Negro and other neighboring communities. Because resettlement and violence are linked, the World Bank should continue to support the compensation process taking into account the compensation criteria listed by the CEH³⁴. The World Bank should also monitor the compliance with its own Operating Directives on Resettlement (O.D. 4.30), Indigenous People (O.D. 4.20) Environmental Impact Assessment (O.D. 4.01) and diffusion of information (O.D. 17.50) by opening another investigation on violence, the resettlement and the compensation process.

After twenty years, it is now clear that not all the money lent by the World Bank and IDB to the Guatemalan government to finance the INDE project were used for this. Corruption went hand in hand with the use of funds to finance military activities. About US\$8 to 12 million were allocated for the compensation process, but only US\$3million were used. World Bank and INDE documents show that the housing construction lasted until 1989, whereas there is evidence that it ended in 1983. Since 1996 INDE took part in the compensations only in a marginal way. In fact, it participated in the new compensation process only to finance the registration of property titles for the houses (and not for all of them) and a ridiculous cash payment for the crops³⁵. "The resettlement and compensation were not made by the institution legally responsible for them" but by FONAPAZ with a US\$200,000 financial, logistic and administrative support of the World Bank, according to WB expert.³⁶ Where did the money go? An investigation should be carried out in the funding institutions.

Notes

- ¹ Gaitán Sánchez, Gustavo Adolfo "Los asentamientos humanos en la cuenca del Rio Negro o Chixoy, Guatemala". Unidad de Reasentamientos Humanos, INDE, 1981.
- ² INDE, "Estudio sobre los impactos de Chixoy". Guatemala, 1982, pg. 45.
- ³ Fundación de Antropología Forense de Guatemala (EAFG), "Las masacres de Rabinal", 1997, pg. 95. Including people living in the upper basin estimates increase to 4,144 (Gaitán 1981).
- ⁴ LAMI "Feasibility study of the Chixoy Project" 1974.
- ⁵ Diario de Centro América, 22, Vol. CCIX, 19 July 1978.
- ⁶ For a more complete illustration of the Rio Negro massacres: EAFG "Las masacres de Rabinal", 1995, 1997; Witness for Peace (WFP) "A People Damned- the Impact of the World Bank Chixoy Hydroelectric Project in Guatemala" 1996; Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG) Report "Guatemala Nunca Mas" 1998; Comisión para el Esclarecimiento Histórico (CEH) Report "Memory of Silence" February 1999.
- ⁷ EAFG pg. 159.
- ⁸ CEH : Caso Ilustrativo n.10 "Massacre y eliminación de la Comunidad de Rio Negro" Anexo I, vol.1.
- ⁹ EAFG pg. 234.

- ¹⁰ EAFG pg. 98.
- ¹¹ About 300 cattle, according to local testimonies.
- ¹² Testimony of Cristobal Osorio Sánchez. The same in EAFG pg. 165.
- ¹³ EAFG pg. 99.
- ¹⁴ Danilo A. Palma Ramos: "El proceso de reasentamiento y resarcimiento de las comunidades del area del complejo hidroeléctrico del Rio Chixoy: sistematización retrospectiva", Banco Mundial / Misión Guatemala Draft May 1999.
- ¹⁵ Letter to Mr. J. Wolfensohn, President of World Bank from International Rivers Network and Witness for Peace, 9 May 1996.
- ¹⁶ The main findings of the WB investigation can be found in "Chixoy Hydroelectric Project, Guatemala Background note" attached to Mr. Wolfensohn's letter to IRN and WFP, September 27, 1996.
- ¹⁷ Testimony of Antonio Vasquez Xitumul.
- ¹⁸ Danilo A. Palma Ramos, Draft May 1999 pg.36.
- ¹⁹ According to the testimony of Carlos Chen, who was working with the archaeological commission.
- ²⁰ INDE "Estudio sobre los impactos de Chixoy". Guatemala, 1982, pg. 74.
- ²¹ LAMI "Feasibility Study of the Chixoy Project" 1974.
- ²² Witness for Peace Report (WFPR), 1996, pg. 12.
- ²³ Oficina de Derechos Humanos del Arzobispado de Guatemala 'Informe Proyecto Interdiocesano de Recuperación de la Memoria Histórica: "Guatemala Nunca Mas" 1998, vol.III)
- ²⁴ WFPR, 1996, p.18.
- ²⁵ Comisión para el Esclarecimiento Histórico (CEH) Report "Memory of Silence" February 1999, Anexo I, vol. I "Conclusiones".
- ²⁶ Ibid.
- ²⁷ In the "Project Completion Report on Guatemala Chixoy Hydroelectric Power Project", December 31, 1991, the World Bank admitted that "there is insufficient data available to document whether the project achieved its resettlement objective".
- ²⁸ "... all those responsible for the project, from the small ones to the big ones, have stolen the money... There is no doubts that INDI encouraged - and benefited from - the massacres", P. McCully, "World Bank to Investigate Chixoy Dam Massacre", Bankcheck Quarterly, Sept. 1996:13.
- ²⁹ The 1991 WB "Project Completion Report" of Chixoy mentions massive massacres only indirectly while pointing out that main problems were "due to intensive insurgency activity in the project area during the years 1980-1983...two resettlement officers were killed while performing their duties..." World Bank, Project Completion Report on Guatemala Chixoy Hydroelectric Power Project December 31, 1991.
- ³⁰ WFPR, pg. 19;
- ³¹ Mr. Wolfensohn's letter to IRN and WFP, September 27,1996.
- ³² A detailed analysis of all these violations can be found in the Report of di L. Cori, F. Martone, J. Colajacomo "Large-scale dams, Peoples' Rights and the Environment: the cases of Yacupetá, Chixoy, Katse. The role of Italian TNCs, development aid, the World Bank and governments" Reform the World Bank Campaign, June 1997.
- ³³ UN Convention on the Prevention and Repression of Genocide (1948); Additional protocols. Presented by the Lelio Basso International Foundation to the UN in 1993.
- ³⁴ A pilot program, backed by UNOPS, has been started in the Rabinal department, but it still didn't take in considerations resettlement victims.
- ³⁵ The exact amount of realized INDE commitments can be found in the L.D. Alonso "Report on the accompanying process for the resettled communities during 27 months" commissioned by the World Bank.
- ³⁶ Danilo A. Palma, Draft May 1999.



INDIGENOUS
PEOPLES
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AREAS
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ASIA:

From
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to Practice

**Edited by Marcus Colchester
and Christian Erni**

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**INDIGENOUS
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In the recent years conservation organisations like the World Wide Fund for Nature (WWF) and the World Conservation Union (IUCN) have not only come to acknowledge the crucial role indigenous peoples can play in conserving the world's biodiversity. In their new policies, the rights of indigenous peoples to land and resources in protected areas are explicitly recognized. IWGIA's latest publication in the document series examines current biodiversity conservation practices in South and Southeast Asia as they relate to indigenous peoples' rights. The 12 case studies from India, Pakistan, Nepal, Thailand, Cambodia, Vietnam, Malaysia, Indonesia and the Philippines are based on presentations made at a conference in Sabah, Malaysia, in December 1998. Each of the contributions is followed by a summary of the main issues addressed during the subsequent discussions, and the book ends with three articles analysing the state-of-affairs of biodiversity conservation in the region in light of the 'new approach', drawing conclusions and making recommendations.

NAMIBIA



A CASE STUDY ON THE PROPOSED EPUPA HYDROPOWER DAM

by *Andrew Corbett*

*Legal Assistance Centre
(in consultation with the Himba traditional leadership)*

1. Introduction

The idea of damming the Cunene River bordering on Angola in northern Namibia was suggested as far back as the era of German occupation prior to the First World War. Yet it was only in the late 1980s, motivated by forecasts about Namibia's increasing need for power, that NamPower (the public power utility) began to advocate the construction of a hydropower scheme in the Epupa area. Namibian independence combined with increasing political stability in Angola made the concept more feasible.

The proposed Hydropower Scheme on the Lower Cunene River, as it is officially referred to or the Epupa Dam project as it is colloquially known (because of the Namibian government's insistence on a site at the Epupa Falls on the Cunene River), will be the first of its kind on Namibian soil. There is accordingly no prior national experience of large dams and indigenous peoples and the process has thus drawn on regional and international experience.

Should the Epupa Dam be built on the Cunene River the consequences for the Himba pastoralists living in and around the inundation area would be severe. For this reason the Himba are unequivocally opposed to the construction of the Dam. This paper seeks to highlight the

competing interests which any such venture must inevitably pit against one another – national development priorities and energy needs **versus** indigenous land and natural resource rights. An attempt is also made to sketch the Feasibility Study process and its findings.

2. The feasibility study

A 1991 agreement between the governments of Namibia and Angola gave the official go-ahead for an investigation of a hydropower project in the Epupa area, and detailed technical and environmental studies began in 1992. Because the Cunene River lies on the boundary between Namibia and Angola, any river development must be agreed to by both countries. A "Permanent Joint Technical Commission of Angola and Namibia on the Cunene River Basin" (the PJTC) commissioned a group of experts (NAMANG) to assess the feasibility of a hydropower project on the Cunene River. The work of NAMANG was funded by the Swedish and Norwegian governments.

A Feasibility Study Report was compiled by a team of experts over a period of some three years. Because of public concerns about the negative impacts of dam construction

in the vicinity of Epupa, the PJTC and NAMANG decided to expand the project by including alternate sites lower down the Cunene at the Baynes Mountains. NAMANG recommended that the Baynes Site should be the subject of the final round of investigation, because it would create fewer environmental and social problems while providing roughly the same energy potential. However, the PJTC was concerned about the fact that the energy output of the Baynes Site would only be comparable to that of the Epupa Site if the Gove Dam in Angola was fully operational. Since this factor could not be assured, the PJTC decided that the final stage of the feasibility study should also include the Epupa Site. The Feasibility Study Report has two major parts. Part A is an environmental assessment which includes an examination of the impact of each site on the physical environment, the ecology and the social and cultural life of those who reside in the region. Part B is a technical assessment which includes economic evaluations of each site, as well as a comparison with alternative energy sources.

3. Electricity needs and alternative energy sources

According to the Feasibility Study, individual consumers are the largest users of electricity, despite the fact that 70% of Namibia's population lives in rural areas which consume only a small proportion of the nation's electricity. Mining was once the largest energy consumer, but as the mining industry stagnated, consumers who purchase electricity from municipalities began to outstrip the mines with their demands for power. Electricity distributed by municipalities now accounts for more than half of the electricity consumed in Namibia, with mines using about 40%.

Predictions of future demand for electricity

Energy consumption in the entire country has increased by an average of 3,7% each year from 1987 to 1995. It is difficult to make accurate projections about future electricity use. For example, household use depends on pricing policies - if the price of electricity goes up, there is more impetus for households to conserve energy. Demand by mines depends in part on world prices for a variety of minerals, as well as on whether or not new mining projects which are on the drawing board will actually materialise.

Under the most likely scenario for economic growth, the Feasibility Study predicts an average annual increase in electricity demand of 6,9% over the next ten years. Demand will not actually increase smoothly each year, but will move forward in uneven jumps as new mining or water pumping projects are established. The Feasibility Study anticipates that the increase in demand will level off to a steadier rate of about 4% each year after 2005.

Namibia's Current Sources of Electricity

There are four major sources of electricity in Namibia at present. The primary source of power is the Ruacana hydropower plant. The output of this plant depends upon the seasonal river flow and has dropped to virtually nil during drought periods. The inadequate operation of the Gove Dam in Angola makes it impossible for the flow of the river to be regulated as planned, to offset the effects of irregular rainfall. Part of the electricity produced at Ruacana is exported to South Africa, at times when Namibia is not able to absorb the total output.

A significant proportion of Namibia's electricity is imported from South Africa, with imports accounting for 38% to 55% of Namibia's total supply during 1994-1996. NamPower has almost completed the construction of a higher-capacity transmission line from South Africa, which will make it possible to ensure an adequate energy supply well into the next century. However, according to the Feasibility Study, this is incompatible with the goal of greater energy self-sufficiency. The major concern is that the price of importing electricity from South Africa will rise in future once South Africa no longer has power to spare, even though the tariff is already set by agreement up until the year 2005. Eskom itself (which is the South African equivalent of NamPower) plans to utilise excess power generation capacity in the region (such as relatively cheap power from Cahora Bassa in Mozambique) and anticipates that it will have no need to invest in new power-generation capacity before 2010.

Even if a hydropower plant were built at Epupa or at Baynes, this would not be sufficient to meet Namibia's power needs at all times. Either of the proposed hydropower projects would have to be supplemented by other supply sources. This means that a careful consideration of all the options is important no matter what decision is made on the Epupa Dam.

Kudu Gas

The Kudu Gas Field offshore of Oranjemund on Namibia's west coast was discovered in 1973. It is a large deposit by international standards, and the gas is of a high quality. Natural gas is an efficient, clean-burning energy source which causes minimal pollution. The discussion of Kudu Gas in the Feasibility Study has already been overtaken by events. In November 1997, an agreement was signed between NamPower, Eskom and Shell Exploration & Production Namibia (the lead company in an investment group which also includes Texaco Inc USA and Energy Africa). The agreement committed these partners to going forward with a feasibility study for a gas-driven power plant. This commitment was reconfirmed as recently as June this year, particularly in the light of further discoveries which revealed the gas reserves to be in excess of 20 trillion cubic feet - up from the initial estimate which put the gas reserves at a maximum of 5 trillion cubic feet.

The envisaged power plant, predicted to be operational by 2005, will have a power generation capacity of 750 MW (megawatts) — as compared to 240 MW for Ruacana and 360 MW for both of the proposed hydropower projects. In other words, the maximum output of the Kudu power plant will be more than twice that of the proposed Epupa hydropower plant at its peak. Only 320 megawatts of power generated by Kudu would be consumed by Namibia, whilst the remaining 430 megawatts would be purchased by Eskom for industrial use in South Africa, particularly in the Western Cape.

Other alternative energy sources

Solar power

Namibia receives an average of 3300 hours of sunshine each year, more than almost any other country in the world, making it a strong candidate for solar power. The ability to draw on a local source of natural gas (from the Kudu Gas Field) also makes solar thermal generation a particularly suitable option for Namibia. However, the Feasibility Study concludes that solar thermal power generation would not be cost-effective for Namibia at this stage.

Wind power

Windmills have long been used for water-pumping in Namibia. The high wind speeds along the coast open the door to the possibility of electricity production with wind turbines in these areas. Wind power already makes substantial contributions to the power supply in other countries, such as Germany, India and Denmark, where 10% of the total national demand for electricity will be met by wind power by the year 2010. Among the attractions of wind power are its renewability and its low environmental impact. Almost the only environmental hazard from wind-generated power is the need to consider danger to birds in the siting of wind turbine installations. The technology is well-advanced, and there are numerous international examples to draw on. However, the Feasibility Study concludes that wind power is not economically attractive at present but should be further investigated.

Energy conservation

The Feasibility Study assumes that there is little potential for reducing electricity demand through conservation measures because per capita energy consumption in Namibia is already low by international standards. However, the report by its own admission does not consider the possibility of stimulating conservation through awareness campaigns or credit schemes to encourage the use of more efficient appliances such as energy-efficient refrigerators and energy-saving lights. Conservation could also be encouraged by an increase in the rates charged for electricity, which are presently low in comparison to those elsewhere in the world.

4. The environmental impacts

The total volume of the dam at Epupa would be about 4½ times larger than the dam at Baynes — 11.5 billion cubic meters, as compared to 2.6 billion cubic meters. As a point of comparison Namibia's largest existing dam contains just under 300 million cubic meters of water when full.

The Epupa site would flood a much larger area — 380 square kilometres at the high water level, compared to 57 square kilometres at Baynes. This means that the Epupa site would take 6½ times as much land out of use as the Baynes site. In practical terms, the difference is even larger because the land at the Epupa site has a greater use value than the land at the Baynes site, being currently utilised by the Himba for homes, gardens, seasonal grazing and access to water as well as being the location of culturally-important gravesites.

Expanses of barren land will be exposed at both sites when the water level is low, with this area being about 5 times greater at Epupa — 22,000 hectares, compared to 3,900 hectares at Baynes. This land, which is called the "draw-down zone", will not be attractive or useful, but it is not considered to be environmentally critical in either case.

Epupa Falls

One significant difference between the two sites is easy to understand. Epupa Falls will be lost forever if a dam is built at the Epupa site, but preserved if the Baynes site is chosen. The loss of such an imposing natural feature is immeasurable, and so is valued at zero in the cost comparison between the two sites.

Another important aspect of the potential plant loss at the Epupa site would be the destruction of about 6000 palm trees which are a source of *omaru* nuts. These nuts are a key food resource for the local Himba in times of drought. If the Baynes site is chosen, only a few of these palm trees will be lost.

Cost of impacts

According to the Feasibility Study, the Baynes site is more expensive. The total cost for Baynes is US\$551.52 million, as compared to US\$539.40 for Epupa. The costs of dam construction, power transmission facilities and slightly longer access roads are the components which make Baynes more expensive. However, the costs of the necessary waterways and environmental mitigation are higher for Epupa.

When the costs of the two projects are compared, it must be noted that some of the human costs are impossible to quantify fully. The financial implications of the various social and cultural factors are quantified in the report, but this does not capture the entire "cost" to the affected community or the nation. For example, how can one place a monetary value on the loss of human life due to increased



Epupa Falls. Photo: Teresa Sweijer

health risks caused by the Dam? It may be possible to measure the amount the person would have earned during his or her lifetime, or the cost of the health care involved. The Feasibility Study measures the possible loss of life in terms of the costs of the steps which will be taken to minimise the negative health impacts.

There are other impacts which are even harder to measure. The Report points to a number of key factors which cannot be adequately valued in monetary terms: (1) the loss of Epupa Falls; (2) the loss of biodiversity in the form of two critically endangered fish species at both sites, with the additional endangerment of a new species of fish at the Baynes site; (3) the loss of ancestral graves, which will be ten times greater at the Epupa site; and (4) the impact on the social environment. This is more minor and can be mitigated at Baynes while "for the Epupa Project these impacts in the shape of changed identities, lifestyles and production systems cannot be fully mitigated". Thus, the values which are considered to be immeasurable are all weighted against the Epupa option.

This means that there is no objective way to decide on the relative merits of the two sites. In the words of the Feasibility Study, "the final decision will have to rest on a subjective valuation by decision-makers and is thus in the realm of politics".

5. The impact of the dam on the Himba

Pastoral production

Before 1920, Himba pastoralists were engaged in various forms of economic diversification. They traded with Portuguese and Ovambo communities, fought as mercenaries for the Portuguese colonial army, and entered wage employment with traders, hunters and farmers. It was the restraints imposed by the South African regime which blocked this trend. Restrictions on the movement of livestock cut off opportunities for trade. Opportunities for wage employment disappeared when the government refused to allow the Himba to cross the river for work in Angola and then ignored them in the official labour recruitment systems for "South West Africa". The economic activities of the Himba on the Angolan side of the river were similarly constrained by the Portuguese government. Thus, the subsistence economy which characterises Himba communities today was artificially created and enforced.

Wage employment remains rare among the Himba, but they have excelled in pastoral production. They herd sheep, goats and cattle, a combination which makes the most of the available resources by utilising different layers of vegetation. This mixture also provides a buffer in times of drought, since grasses are generally more susceptible to decreased rainfall than trees and bushes. So, for example,

during the catastrophic drought of 1981, goat herds could be maintained even though cattle herds were reduced by up to 90%.

The Himba have developed a range of techniques which minimise economic risk to individual households while at the same time advancing the interests of the entire community. Examples are the cattle post system which provides an avenue for poorer relatives to gain access to the herd of a rich family member, the practice of livestock exchange and the communal management of grazing areas.

The reality of Namibia's Himba people has been obscured by inaccurate stereotypes. The tourist industry portrays them as unspoiled remnants of an ancient Africa, while the Namibian Government and various development agencies have presented them as a primitive and underdeveloped community with a lifestyle that should be upgraded. In fact, the Himba are the most successful and economically independent subsistent farmers in Africa – a relatively healthy and wealthy community with sound strategies for food security which have proven successful even in times of severe drought.

Loss of land

The Epupa site will flood 110 permanent dwellings, as opposed to 15 such dwellings at Baynes. Although the Himba are nomadic, there are families who are very well-established in certain areas as well as others who visit these areas on a regular basis. The Epupa site will have an impact on about 1000 "permanent users" and 5000 "occasional users", as compared to 100 "permanent users" and 2000 "occasional users" at Baynes. The land which will be flooded at Epupa is also more significant in terms of seasonal gardening and reserve grazing during periods of drought. A dam at Epupa will result in the loss of two traditional river crossings which will constitute a major social impact., while the Baynes dam would not interfere with river crossings.

The loss of riverine resources

The inundation of the Cunene basin at Epupa will destroy the riverine forests which are a crucial source of grazing and browsing in dry seasons and in times of drought. It will result in the loss of an annual crop of hundreds of tonnes of the palm nuts which are so crucial in drought periods. The dam will bring an end to gardening in the fertile soils along the riverbank.

The loss of grazing resources

These losses will produce a ripple effect which will multiply their impact. Dr Bollig estimates that the cattle displaced by a dam at Epupa on the Namibian side of the river alone will require some 17,500 hectares of grazing elsewhere at all times, and an additional 70,000 hectares of

grazing elsewhere in times of scarcity – without even taking into account the needs of the small stock, which also use the river basin. The pressure placed on other grazing areas will be enormous. So, although only about 1000 people will actually be displaced if the river basin is flooded, the dam will affect the drought strategies of about 10,000 Himba (on both sides of the river) and place additional strain on countless others who will be squeezed in the search for alternative grazing. One possible result is an increased dependency on the state for economic and social security. A dam at Baynes, on the other hand, would have little effect on herding patterns and drought strategies, because the steep terrain of the riverbanks means that the area bordering the river there is little used.

The loss of gardens

About 75% of Himba households engage in some agricultural activity during the course of the year to produce supplementary food, with the alluvial soils along the Cunene being prime garden spots. Maize is typically intercropped with various types of pumpkins and melons. There are no cash crops. These gardens are particularly important for poorer households which find it difficult to survive off of the resources from their herds.

Drought strategies

During times of drought, several survival strategies come into play. Restricted grazing areas are opened up, and many households shift closer to the riverine forests along the Cunene. Grazing may be bad there as well, but the river provides a reliable water supply which decreases stress on the livestock and reduces their food requirements. The *Faidherbia albida* trees on the riverbanks also provide an abundance of pods which serve as nutritious fodder for goats. The palm trees along the river, which are not very susceptible to low rainfall, provide a crucial source of *omarunga* nuts which are a crucial food resource in lean times. Food sharing also increases in times of scarcity, meaning that many people gather to share in the meal when an animal is slaughtered.

These strategies proved to be successful during the 1981 drought. Even though herds were devastated, few families dropped out of pastoralism, there were few famine-related deaths, and herds were slowly restocked without government support or subsidy.

The loss of ancestral graves

A dam at Epupa would flood 160 graves, while only 15 graves would be flooded if the Baynes site is chosen. According to the Feasibility Study, this loss “is highly significant and cannot be valued in monetary terms”.

Himba in the Epupa area frequently name the destruction of ancestral graves as their major objection to the proposed dam. While Himba leaders say that their

culture will be at risk if the ancestral graveyards along the Cunene are inundated, advocates of the dam maintain that the graves can be relocated, pointing to the relocation of the remains of Samuel Maharero from Botswana to Okahandja in 1923 as an example. But the Himba assert that relocation will destroy the significance of the graves just as much as flooding them would.

The debate stems from different understandings of what a grave signifies.

For the Himba, a grave is not just the location of the physical remains of a deceased person - it is a focal point for defining identity, social relationships and relationships with the land, as well as being a centre for important religious rituals.

All places which are permanently used as settlements have at least one graveyard associated with them. People are generally buried in the place where they feel most at home – most often the place where they were settled during their last years, but sometimes the place of their birth, or simply the place they loved most during their lifetimes.

Graveyards are usually located near a watercourse, often under a large bush or tree. The preference for riverine locations is partly a practical one – alluvial soils are usually deeper and easier to dig. But riverine areas are also heavily loaded with emotion, as the points where communities congregate, the starting points of annual cattle migrations, the places where people have struggled to survive droughts, and the sites of graves of other family members. The river courses and the stories which are associated with them are common subjects of Himba praise songs.

Because graves demonstrate a continuity of settlement, they determine the influence of the “owner” of the land. The “owner” of the land will found his claim for political power on the numerous graves of generations of ancestors in the area. Those who can demonstrate the longest connection with the land will have the strongest say over land-related matters such as rights of access and control over resources. Because graves are so important in the land tenure system, senior elders can recall the location and identity of even the most ancient graves. For example, in debates about taking a stand on a development such as the Epupa dam, the Himba will point to the number of their ancestral graves as the major indicator of their right to influence the decision. Speakers will ask rhetorically, “Whose ancestral graves are older, ours or theirs?” The key point is not the physical fact of the graves themselves, but the connection between the graves, the family’s history and the community’s system of land tenure and decision-making. This nexus cannot possibly be preserved if the graves are relocated. When told that the Epupa dam will flood large numbers of grave sites, many Himba have asked, “Who will then know who owns the land?”

The multiplicity of meanings and functions centred around ancestral graves explains their great significance in Himba society. As Dr Bollig puts it, to the Himba "graves are not simply an accumulation of stones under which some bones rest, they are places laden with emotion and memories". The bones and stones could be relocated, but the meaning of the graves within the Himba world view would inevitably be left behind and destroyed.

Threats to health

The Epupa site is expected to produce higher incidences of malaria and bilharzia (schistosomiasis), a disease caused by a parasite associated with still or slow-flowing water. The influx of a labour force from other areas will probably lead to the spread of sexually-transmitted diseases, including HIV, which has been up to now absent from the local Himba communities. However this problem is likely to arise regardless of which site is chosen.

6. The impact of the construction phase

Construction of a dam at either site will require about 1000 workers (450 drawn from Namibia, 450 from Angola and 100 expatriates). Their numbers will be increased by family members, traders and an informal sector. A reasonable estimate is a construction town of at least 5000 inhabitants on the Angolan side of the river.

The impact of this sudden and enormous new market for food is likely to be an uneven one. Richer households will be able to profit by selling substantial numbers of cattle. They will then be able to buffer themselves against risk by diversification into other forms of economic activity, such as agriculture or trade. But households with smaller herds will be unable to compete, and the livestock exchange networks which they rely on will shrink. Another possible result is that some of the newcomers will want to invest in livestock herds of their own, increasing local pressure by competing for scarce grazing. It is the abruptness of the monetarisation which will be particularly harmful, as there will be no time for the evolution of alternative economic and social strategies to accommodate the change.

Aside from trade in cattle, the benefits of the increased demand for consumer goods will most likely accrue to businesses based in Opuwo rather than to the Himba in the immediate vicinity of the project. And those who do profit may well go from "boom to bust" since the rise in demand is unlikely to be sustained once the dam is completed.

It is unlikely that many of the Himba in the project area will secure formal employment during the construction phase, given their low level of marketable skills and their lack of proficiency in English. But they may be part of the informal settlement which will probably grow up around

the construction town, with attendant problems such as crime, alcoholism, prostitution and the spread of AIDS.

It is also possible that the sudden influx of outsiders may threaten budding community-based initiatives for women who harvest plants which are marketable in the international perfume and cosmetic industry, through uncontrolled access and harvesting.

7. Analysing the potential benefits

Both dams will result in the upgrading of existing gravel roads on the Namibian side of the river, along with 5-21 kilometres of new gravel roads, although no new tarred roads are contemplated on the Namibian side. Improved road access could have positive spin-offs for the local Himba in the form of increased livestock marketing opportunities and better access to social services. But improved transportation alone will not bring improved services. For example, many of those interviewed cited a need for better veterinary support services to combat stock disease, but problems experienced in the past reportedly stemmed from shortages of vehicles and medicine rather than from road conditions.

Easier access to the region may increase the number of tourists - depending on whether or not Epupa Falls is destroyed - but this will not necessarily benefit the local people, as most tour operations are run from Windhoek. An increased influx of visitors could also lead to environmental degradation which then reduces the attractiveness of the area for tourism.

The introduction of more schools and clinics has been often-cited as a local benefit of the project, but this is more complex than it seems on the surface. For example, the existing school and clinic at Okongwati are under-staffed and ill-equipped. While about 29% of those interviewed would like an additional school closer by, 12% were opposed to all schooling. One perception is that a low level of schooling may lead to dissatisfaction with the Himba way of life while not equipping youth with marketable skills - with the result that a school-leaver ends up as a low-paid wage labourer rather than a self-employed and relatively wealthy herder.

There is also an inherent conflict between a nomadic lifestyle and a sedentary model of education. For example, English language skills are more likely to be acquired by means of mobile English teachers who travel with a group of households for several months than through English courses in a fixed place.

Some local people fear that improved hospitals, schools and shops would simply attract outsiders who would then compete for local resources. Furthermore, there is a strong feeling in the area that the provision of services such as hospitals and schools should not be

conditioned on the acceptance of a dam.

The electricity which will result from a hydroelectric project is locally perceived as something that may be beneficial for others, but not of much use to a pastoral lifestyle. However, electrification may improve the efficiency of local schools and clinics, as well as stimulating business in the region. The same is true of improved telephone services.

8. Himba attitudes to change

Himba opposition to the dam does not stem from a blind rejection of all forms of change, or from a lack of understanding of the project. Himba people living in the vicinity of the proposed dams engage in detailed discussions about various prospects for development, and have shrewd opinions about the costs and benefits of a dam as far as they are concerned. There is intense local resentment to the allegation that local opposition to the dam is something which has been engineered by outside groups.

The opposing viewpoints about the dam within the Cunene Region are understandable. Those who are for the dam tend to be business people, merchants, regional government officials and politicians – those who have nothing to lose if a dam is built, but see it as an entree into a western-style market economy. On the other hand, the Himba pastoralists in the project area see no prospect of tangible benefit from the dam, but only the loss of resources, the loss of control over their land and the erosion of socio-economic structures which have sustained them in a successful and independent existence for decades. This loss “is highly significant and cannot be valued in monetary terms”. The Feasibility Study assigns costs to this item, but **these** represent only the costs of physically relocating **the graves** or taking other practical steps to appease the **affected** Himba. No cost is assigned to the cultural impact on the affected communities.



Himba woman. Photo: Teresa Svejter

9. The process of consultation and participation

General

The method of consultation has ranged from the President and government delegations visiting the affected Himba at Epupa, to public consultations in the capital, Windhoek, attended by the Himba leadership. There have also been in-depth studies undertaken by anthropologists as part of the feasibility study to document Himba attitudes and fears in regard to the dam. The Himba's lawyers, the Legal Assistance Centre have also held regular and extensive consultations with the Himba leadership to explain to them the process, their legal rights, advised on strategy and ensured that they were able to attend all important public meetings.

Problems with the process

The first phase of the consultation process commenced in 1991 when Nampower and government officials visited the affected community in the Epupa area. This visit created misunderstandings and most of the Himba were left with the impression that the Epupa dam would be a very small dam for livestock water consumption (in other words, the only concept of a dam that they were familiar with). The crucial issue of the inundation area was either not addressed or misrepresented. It was accordingly left to the social scientists attached to the feasibility study to inform the Himba about the **size** of the dam, the inundation area and other important impacts. Not surprisingly the Himba considered that Nampower and the government had tried to trick them into agreeing to the project.

This raises questions about the government's commitment to genuine “informed consent”. The government further sought to undermine Himba opposition to the Dam by claiming on unsubstantiated grounds that only a minority of Himba were opposed to the project. **However**, the reality is that in February 1998 26 out of the 32 traditional leaders from the Cunene Region, in which the project is situated, signed a petition stating “we do not believe that the project is in the best interests of Namibia

nor the communities we represent in the Cunene Region, while we believe that the project will be particularly damaging to the livelihood and economic subsistence of the Himba people living in the project areas which would be flooded should the dam be built". Government has furthermore attempted to explain, again without substantiation, the Himba's opposition as a consequence of manipulation by foreign environmental lobbyists.

There were several further problems with the manner in which the process was conducted. The social investigation had to be suspended after statements made by the Deputy Minister of Mines and Energy at a public hearing on 8 March 1997 in Opuwo gave a strong impression that the decision to build the dam had already been taken. The arrogance with which the Himba leadership was treated and the perception that their views were ignored strengthened their resolve to oppose the construction of the dam.

As a result, members of the Himba communities most directly affected by the dam felt that their input was irrelevant. They refused to continue with the household, water and health surveys which were still in progress. They also refused to discuss mitigation, which was intended to cover all aspects of compensation to persons who would be adversely affected by the construction of the hydropower scheme. The Minister's views were reiterated by senior Nampower officials more recently.

Harassment and intimidation

In addition, field staff who were conducting these portions of the study reported harassment and intimidation by government officials in the Cunene region. In July 1997 heavily armed personnel from the Namibian Police broke up a private meeting between the Epupa community and their lawyers from the Legal Assistance Centre and refused to allow it to continue. The purpose of the meeting was primarily to give feedback on the social aspects of the Feasibility Study to the community and to discuss their response thereto. It was only after the Legal Assistance Centre obtained a court order from the High Court that the Epupa community were able to meet with their lawyers without fear of intimidation and harassment from government agents.

These events exacerbated an existing lack of trust on the part of the Himba community that the Government was, firstly, not serious about objectively assessing the findings of the Feasibility Study before taking a decision as to whether to proceed with the project, and secondly, whether the Government was serious about wanting to hear what the community wanted to say about the project or instead was rather bent on suppressing their views.

Inadequate communication

Another complicating factor was the Government's failure to follow through on a promise to appoint a credible liaison body to facilitate communication between Government and the Epupa community. The Legal Assistance Centre was approached by the project in February 1997 to fulfil this function but after delays of some four months the Ministry of Mines and Energy indicated that they had the capacity to do so themselves. In reality this role was never performed by government due to their lack of credibility with the Himba leadership.

The University of Namibia was then appointed in this role and also to discuss mitigation with the Epupa community, effectively bypassing the feasibility team. The leader of the UNAM team only spoke directly to the Epupa community as late as October 1997 and was informed by Chief Kapika speaking on behalf of the Epupa community that they did not consider it appropriate to deal with a new group of consultants as they had confidence with the existing field team consisting of Dr Michael Bollig and Dr Margaret Jacobsohn. Despite this decision by the Epupa community the UNAM team went behind the back of Chief Kapika to try to persuade one of his councillors to attend a meeting with them through offering him money for transport to attend a meeting with the UNAM team. This attempt to undermine the authority of the Himba traditional leadership effectively ended UNAM's role in liaising with the Himba. However, despite this the UNAM team continued with their study parallel to the Feasibility Study and presented a report to the Ministry of Mines and Energy which has never been made public. What is clear is that the report cannot directly reflect the Himba's views in regard to the dam issue since they were not consulted.

The current state of the process

The final feasibility report was released in November 1998. Government was of the opinion that the question of mitigation as regards the Himba could be concluded by the UNAM team referred to above. However, the feasibility study team took the view that the mitigation process had to include interaction with the communities involved. Since this interaction was not possible for the political reasons referred to above, the Feasibility Study is incomplete and according to the report "the details for compensation will have to be negotiated with the communities concerned, if and when circumstances change, in accordance with the generally accepted criteria for bankability".

No further negotiations have taken place between government and the Himba community to date. The debate has also quietened down with focus now being given to the possible development of the Kudu gas fired power station in the south of Namibia. Nevertheless, a few months ago the Namibian Minister of Mines and Energy has been reported to be in favour of holding a referendum

in the whole Cunene Region (the region in which the dam site is situated, but most of whose inhabitants are not directly affected by the proposed project) to get a mandate to proceed with the scheme.

The Namibian government has taken the view that the Epupa project "is the best possible way of meeting the country's need for electric power and fulfilling the aspirations of the Namibian people for higher standards of living and a better quality of life..." (Deputy Minister of Mines and Energy, 8 March 1997).

The Deputy Minister, furthermore, indicated that the affected people would be fairly compensated "for any loss of livelihood or income that may result from the Dam" or "for any loss of domicile or shelter". Interestingly no direct mention is made of expropriation or of the loss of land by the Himba. Government has also been on record as saying that the cost of compensation would be included in the total cost of the Epupa project and be borne by the project promoters.

Angolan attitudes to the dam

Several meetings of the PJTC, one as recently as 8 July 1999, have been postponed at the instance of Angolan officials. The official excuse proffered by the Namibian Minister of Mines and Energy for the latest postponement, a meeting which was to have made a final proposal on the Dam site, was the preoccupation of the Angolan government with the renewed war against UNITA.

However, reliable unofficial sources suggest that the more immediate cause is the fact that the two countries are at odds over the Dam site. The Angolans favour a smaller dam in the Baynes Mountains since this site is more dependent on the regulation of the Gove Dam in Angola's central highlands. The Epupa scheme is accordingly being used to canvas for funding to repair Gove which was damaged in Angola's civil war. Namibia is still standing firm on its position that the Baynes site is too small, prone to drought conditions and too dependent on the Gove Dam. There is unlikely to be a resolution of this dispute without intervention at presidential level.

10. Conclusion

The Feasibility Study Report remains incomplete. Both international law and recognised professional standards require an elaborate investigation of the impact of projects such as Epupa on the people who are directly affected. The Feasibility Study itself calls attention to the fact that it is "incomplete" because it fails to include information on social mitigation, which refers to methods for minimising the detrimental social impacts.

Experience with dams in other parts of the world shows that mitigation and relocation schemes have a history of

failure, leaving indigenous peoples with shattered cultures and shattered family structures, as well as high rates of alcohol and substance abuse, crime and prostitution. This aspect is not adequately addressed in the Feasibility Study. Himba land tenure rights are also not given prominence, whilst the issue of relocation is addressed superficially with no discussion of where the Himba might be resettled given the fact that there is no more vacant grazing land available in Namibia. There is also no assessment of the social meaning of such a relocation for the people in question. All this serves to trivialise Himba rights and must be seen as a reflection of their marginalised position in Namibian society.

Perhaps one unintended result of the Epupa project has been the growth in the leadership of the Himba opposed to the Dam. The project and the discussion has brought Himba together to discuss strategy and to look at different options for development. In this process it has been important to reflect on where they are going as a people and how a range of strategies – from community mobilisation, to face-to-face interactions with government, to national lobbying through public meetings, to legal interventions to protect their rights to meet and organise, to international lobbying - can play a positive role in the advancement of their case. Nevertheless it still remains to be seen how successful these approaches will be in effectively putting Himba views on the Government agenda when a final decision is taken as to whether or not to proceed with the project.

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MALAYSIA



THE RESETTLEMENT OF INDIGENOUS PEOPLES AFFECTED BY THE BAKUN HYDRO-ELECTRIC PROJECT IN SARAWAK

by Jacqueline K. Carino

Introduction

The Bakun Hydro-electric Project (HEP) has been dogged by controversy ever since it was first proposed in the early 1980s. Apart from the question of its necessity, its financial viability and its environmental costs, questions were raised from the beginning about its potentially disastrous social impact. This especially derived from the fact that the project would flood an area the size of Singapore and some fifteen indigenous communities, which by 1997 involved some 1,640 families and nearly 10,000 people, would have to be resettled. Given the context of both the way in which indigenous communities have suffered generally at the hands of the federal and state governments over the years, and also, more specifically, through the experience of previous resettlement schemes in Sarawak (and, indeed, elsewhere in the world), many had little confidence that any resettlement would be to the benefit of indigenous peoples. Now that the resettlement project has got under way, these fears have proven all too valid, as this paper will demonstrate.

Part One: Background to The Bakun Hydro-electric Project (HEP)

Why was the Bakun HEP proposed?

The Bakun HEP was first proposed in the 1980s as part of a series of dams to exploit the hydro-electric potential of Sarawak's rivers. The original proposal was scrapped in 1990, after a concerted campaign against it by local indigenous communities and other groups in Malaysia, together with its high financial costs¹. However, in September 1993, the project was revived, at least partly as a response to problems of electricity supply in Peninsular Malaysia. In the words of the Prime Minister, "*Bakun will not only provide the cheapest source of energy but will also serve as a catalyst to the country's industrialisation programme*"². As well as supplying electricity (mainly to Peninsular Malaysia), other benefits from the Bakun project claimed by the government included:

- providing an environmentally-friendly and significant source of electricity;
- generating employment and valuable spin-off industries for Sarawak which would add 3% to that state's growth per year;
- bringing the indigenous peoples 'into the mainstream of development' through resettlement;

- providing much needed infrastructure to a remote part of Sarawak, which would also become a valuable tourist destination.

As announced in 1993, the Bakun HEP was to be a huge project. It was to comprise the construction of a 2400MW hydro-electric dam, the transmission of its electricity, and the building of related infrastructure including access roads, a new township, and an airport. The actual dam is being built on the Balui river, some 37 kilometres upstream of Belaga in Sarawak, Malaysia. (For those unfamiliar with Malaysia's geography, Sarawak is part of the island of Borneo, a considerable distance across the South China Sea from Peninsular Malaysia.) It was to be a massive 205 metre high Concrete Face Rockfill Dam (CFRD), making it one of the highest rockfill dams in the world. The transmission of its electricity would have necessitated some 1,500 km of overland wires and four 650 km long undersea cables, under the South China Sea.

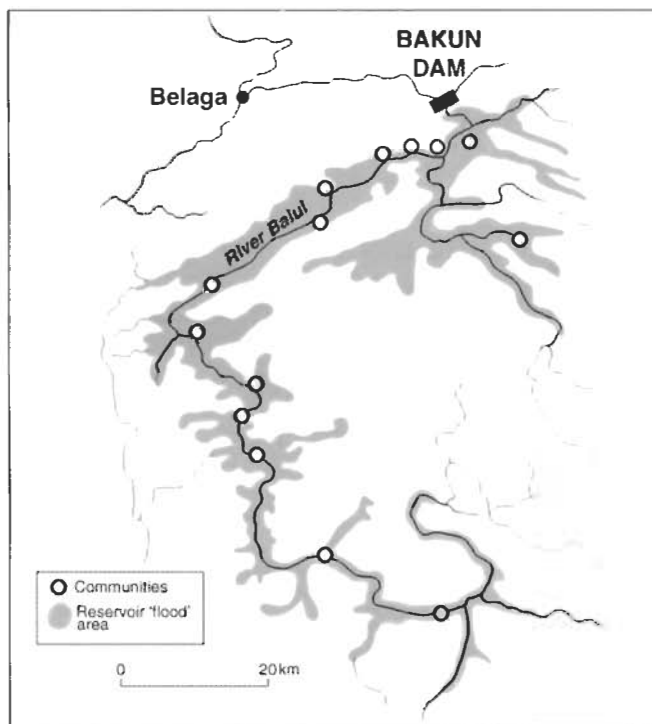
The overall cost of the project was officially estimated at some M\$ 15 billion³, although many argued that a truer figure was anywhere between M\$ 25 and M\$ 30 million. It was announced that the project was to be a privatised project, with the turnkey contract given to the Malaysian company, Ekran, run by Ting Pek Khiing. Its responsibility included the sub-contracting of all necessary works related to the project, and the raising of the finance with which to carry out those works. The Sarawak State government, however, was responsible for the resettlement of the affected indigenous communities.

Doubts about the project

Once it was revived, doubts about the whole project were again voiced by many people. They included some of the affected indigenous peoples in Sarawak, as well as a wide range of non-government organisations, opposition political parties and individuals⁴. The Coalition of Concerned NGOs on Bakun (Gabungan), made up of over 40 Malaysian non-government organisations, has acted to give greater strength and cohesiveness to the questions and debate about the Bakun project. Concern was also voiced by many non-Malaysian organisations and individuals, across the world.

It is worth noting that, in addition to the impact on indigenous communities and the potential impact on the thousands of people living downstream of the dam, the project was attacked on just about every ground. In this, it shares similarity with many, if not all, large dam schemes built or proposed the world over. The necessity and viability of the Bakun HEP have been called into question and the cost of its social and environmental impact was argued to be unacceptable. To summarise:

- First and foremost, it has been argued that there is no need for Bakun's electricity. There is a current surplus in Malaysia which will continue well into the next century. Critics argue that Malaysia has an excellent opportunity to frame future power-generating projects in a properly construed, efficient and environmentally-conscious National Energy Policy. It is still argued that the construction of Bakun is detrimental to such a policy.
- Critics also point out that Bakun's electricity would have been neither the cheapest nor the cleanest. In fact, the cost of Bakun's electricity would have been the most expensive in Malaysia's history, with implications for price rises and extra costs to Malaysian consumers.
- The siting of a dam designed to supply Peninsular Malaysia with electricity in a remote part of Sarawak was considered strange.



The questioning of the desirability and viability of the project centred on several issues:

- Official projections of Bakun's electricity output were said to be wildly optimistic. The project was based on a number of assumptions regarding, for example, efficiency of the dam, rainfall, streamflow, sedimentation rates, likelihood of earthquakes, maintenance costs, speed of construction, and downstream effects, the miscalculation of any one of which would have thrown the viability of the project into doubt.
- Similarly, it was argued that projections of the costs and time anticipated to complete the project were, in the light of experience of other large dams around the world, likely to be overrun, to degrees which could destroy the economic justification of the project. This was especially pertinent to a privatised scheme. It was not

helped by Ting Pek Khiing's claim that he could build it in five years, a boast that, far from attracting investors, seemed to make them ever more uncertain of the way such a large project was being handled. The consortium contracted by Ting to actually build the dam, led by Asea-Brown Boveri (ABB), also became concerned over the issue of time/cost estimates and who was to be responsible for any extra payments in the event of overruns. Partly because of this, ABB were unceremoniously dumped from the project in late 1997, possibly to their relief, shortly before the whole thing was put on hold (again).

- There was anger and condemnation at how the planning of the dam was conducted with no public accessibility to vital feasibility studies, no process of public feedback on a highly controversial and subverted Environmental Impact Assessment process (which was described by the normally compliant mainstream press as "*an abuse*" and "*a farce*"), and extremely limited consultation procedures with the indigenous peoples who have had little idea of exactly what was to happen to them.
- There was considerable doubt about the privatisation process, and whether in the end the project would revert to reliance on government monies. Despite early claims by Ting Pek Khiing that raising the money would pose no problem, there were terrible difficulties in getting investors for the project and in the end, Malaysian government agencies were forced to take up large share-holdings (meaning, taxpayers' money was being used). Now that the project has been taken away from Ekran, following its abrupt abeyance, significant monies are being paid to '*compensate*' that company in what many people call a '*bail-out*'.

By 1997, the project was already facing major difficulties. Financing was proving to be a problem, with reports of lack of payments and uncertain futures. Conditions at the actual dam site were so bad that many local workers refused to work there; foreign workers were used instead. Delays caused by problems with the diversion tunnels had already indicated the wild optimism of original schedules, and the schedule for the resettlement of the indigenous peoples was constantly being changed (put back). The relationship between Ekran and the consortium building the dam, led by ABB, deteriorated to the extent that their contract was terminated.

So, by November 1997, the project was in an utter mess. And, along with a diversion tunnel, confidence in the Malaysian economy had also collapsed. Together with other "mega" projects, the government announced the temporary suspension of the Bakun HEP, and later stated that it would be taking the project back from Ekran. Since then, there has been speculation as to what exactly is to be Bakun's fate. The latest, unconfirmed report is that the project will be considerably scaled down and will be

administered by the national electricity company, Tenaga Nasional. There would no longer be plans to cable the electricity to Peninsular Malaysia; instead, it would be used by Sarawak, Sabah or neighbouring Indonesia. Critics say that both Sarawak and Sabah already have enough electricity, Kalimantan has a number of power projects planned, and that the whole Bakun project should simply be scrapped.

Unfortunately, it has all come too late to save the trees of the reservoir site, which have been clear-cut by another of Ting Pek Khiing's companies. It has also come too late to save the future of the affected indigenous peoples. Despite the project being on hold, the state government have insisted that they move.

Part Two: The Experience of the Bakun Resettlement Project

The resettlement of the indigenous communities because of the Bakun HEP has been conducted in a way which represents the general context in which indigenous peoples find themselves, in Sarawak as in the rest of the world. Their lack of political power, their relative marginalisation, and with a culture that is markedly different from that being pursued by state authorities (and by projects such as Bakun) has meant the indigenous peoples have been able to have little influence over what has happened, and is happening, to them. The consequences of the Bakun project have been to make the lives and future of these communities irretrievably worse.

It is worth recalling that in Sarawak, the indigenous population comprises some 48% of the total population of the state (Sarawak is the largest of the thirteen states of Malaysia). They are divided into numerous (some anthropologists say more than 35) distinct ethnic groups, including Iban, Kelabit, Bidayuh, Kenyah, Kayan, Kajang, Ukit, and Penan. Each group has its own social structure and mores, but all share a culture at whose base is land. Land supplies not just food and resources, but is the spiritual home of the community. The indigenous attitude to land is not one of commercial exploitation. Rather it is one in which the community is entrusted the responsibility for preserving and nurturing the land so that it can be passed on to future generations, intact. The main agricultural practice, shifting cultivation, represents this commitment to sustainability. In addition to farming land, the forest has also supplied food, medicines, building and other materials and is the site of ancestral burial grounds, and again, is jealousy guarded against over-exploitation and destruction, anathema to indigenous culture.

Such an attitude has come into continual conflict with the state government's desire to maximise profitability from land by commercial economic exploitation. Whether through logging, the establishment of oil-palm or tree



Bakun people. Photo: IWGIA's archive

plantations, attempts to introduce commercial agricultural practices or through infrastructural development for either tourism or other ends (Bakun being an example), the state authorities have consistently backed companies and contractors against indigenous communities even where there is clear incursion on indigenous land and destruction to indigenous property and culture. At the basis is the perception by the state authorities that indigenous land use is "unproductive", that indigenous attitudes are "a barrier to development", and that indigenous peoples must be brought "into the mainstream of development" (as defined, of course, by the state authorities)⁵. As we will see, these prejudices run through the Bakun project, and specifically in its resettlement scheme.

Who are affected?

The affected communities of the Bakun HEP comprise a number of indigenous groups. Reports have identified some fifteen communities affected, including Ukit, Kayan, Kenyah, Iahanan and Penan communities. Most of them had been there for many generations. In the 1980s, when the Bakun HEP had first been mooted, the majority of these people had clearly declared their reluctance to move. But in the end, they have had little choice.

Promises

The conflict of attitude between state authorities and the indigenous peoples was apparent immediately in the propaganda surrounding the revival of the Bakun IIEP. Government spokespeople were not slow to promise the world to these indigenous peoples. As Sarawak Chief Minister Abdul Taib Mahmud said: "We believe the Bakun project is the best opportunity to help the Orang Ulu (people of the interior) of Belaga. We want to bring the people of Belaga into the progress that will culminate with Vision 2020."⁶

He also stated, ironically (given the present situation at the resettlement site), that "The children of the Orang Ulu will be able to have modern facilities, including piped water and roads and communication with the outside world. They will be at a par with all Malaysians and will be proud to be called Anak Sarawak (children of Sarawak)."⁷

Other politicians and project proponents were not slow to offer equally rhetorical promises. Ting Pek Khiing, chief executive of Ekran, the **company in charge** of the Bakun project, stated that the **welfare of the indigenous peoples** "will be taken care of. They will be offered permanent jobs, free housing, free water, free electricity. Their children will get proper educational facilities. They will live in easy reach of Bintulu town. Isn't that something to look forward to?"⁸

The promises of a better future for the indigenous peoples were set in the context of the overall perceived benefits that Bakun would bring to Sarawak. As far as the State government was concerned, "*Bakun is a huge gift from the Federal government*", which, among other things, would ensure that "*Sarawak will become the powerhouse of Malaysia*". The spin-off effects of the project were to be the attraction of foreign investment to the State and therefore industrial development in which the establishment of an aluminium plant, a pulp and paper plant and '*perhaps the world's biggest*' steel plant were specifically mentioned. Also earmarked were the development of a high-tension and high-voltage wire industry in Tanjung Manis (apparently through a company in which some of Taib's family members were prominent) and the development of the Bakun area as a tourist resort. Whilst these kinds of benefits may sit well with the state government's priorities for development, they are a little outside the experience of indigenous communities and hardly relevant to indigenous culture.

Batang Ai – an earlier example

The fact is that this kind of rhetoric had been heard before, during a resettlement exercise following the building of another dam at Batang Ai, in the 1980s. The experience of that project had shown that beyond the rhetoric there was little substance. It was a project which demonstrated a considerable failure in planning and implementation because of the arrogance of state authorities in deciding what was best for the indigenous communities affected, and a complete lack of process and sensitivity to indigenous needs.

More than 80 per cent of the resettled people from Batang Ai now say that they are worse off than before. They complained and complain that there was poor consultation, poor information, many promises which were subsequently broken, unattended grievances relating to the compensation process and a lack of proper counselling and preparation on financial management (given that compensation means suddenly these people have an amazing amount of cash which they certainly have never before been used to). They complained and complain that there were and still are a host of problems at the resettlement site which include highly inadequate provision of farming land, high expenses for basic facilities like housing, water and electricity, few employment opportunities (a major broken promise) and a number of social problems which include gambling, drinking, indebtedness, family dislocation and an undermining of peoples' roles within the community, especially those of women.

The Bakun Resettlement: Obstacles and Constraints

In conducting the Bakun resettlement exercise, similar failures have been a feature. Despite plenty of advice about the need to ensure full consultation, information and provision of alternatives in the planning of the resettlement, and avoidance of a wholesale uprooting of indigenous

communities from their land and culture, the state authorities have seemingly failed to heed any of this. Instead, again, they have been concerned to control the resettlement from the top, utilising their appointed leaders within the indigenous communities to translate the little information given, control grievances and ensure compliance. From the beginning they had earmarked one (and one only) resettlement site, at Sungai Asap, to which all affected people would be relocated. No discussion was entertained either about the efficacy or desirability of this plan, let alone about the suitability of the site and its implications.

So when questions were asked about specific plans for the Bakun resettlement, including how the indigenous peoples were to be consulted, what was the process and amounts of compensation, what alternatives were on offer, and what guarantees were to be had to ensure that the disastrous experience of the Batang Ai resettlement project would not be repeated, few answers were given. Instead, obstacles (including the use or amendment of existing legislation) were used against anyone wanting public divulgence of information or opportunity for public debate, and government control of the media was utilised to scapegoat any critics, whether indigenous or otherwise, as 'anti-development' and/or mischievous, self-promoting, traitorous, agents of foreigners or simply misguided.

The Malaysian authorities, which of course includes the Sarawak authorities, have a number of laws available to prevent access to information and to public debate. They have been used to ensure that the Bakun HEP, and the resettlement project, have proceeded with little or no transparency or public accountability. The Official Secrets Act, for example, has been used to classify the many official studies done on the project. At least seventeen studies on the project have been officially commissioned: these remain secret, despite the hugeness of the project and its potential impacts on the Malaysian (and indigenous) people.

The State government itself has commissioned studies specifically relating to the resettlement, but again, and instructively, the State government has been concerned that none of these studies should be publicly available. A Canadian anthropologist, Jerome Rousseau, asked by the State government to prepare one such report, states that part of his contract included a confidentiality clause. This he refused to sign. His study, now openly available, is a highly instructive one with reference to the issues, needs and flaws in the planning for the resettlement. However, other researchers contracted by the government did sign a confidentiality clause, meaning their work and suggestions remain secret. Further, permits have been refused to groups hoping to organise public forums on the Bakun project, passports of indigenous and other representatives have been impounded to prevent them giving their input at regional or international forums, and government agents have been busy in the Bakun area warning people about listening or responding to the views of the few non-government

organisations active in the area. Signposts were even erected stating that these organisations were unwelcome.

This atmosphere is hardly conducive to the inspiration of confidence in state authorities from either the affected indigenous peoples or Malaysians generally. What is there to hide? When some public interest groups sought assurances from the Malaysian government that there would be a process of public participation built into the Bakun planning stages, they were promised that this would be done through the Environmental Impact Assessment. But even this was reduced to a level of farce. Legislation was specifically enacted to allow the federal government to cede its responsibility (for what after all was a huge *national* project) to the Sarawak state authorities. By coincidence (sic), the latter's procedures for EIA had no element of public participation. When three of the indigenous peoples from the Bakun area took a case to court seeking to uphold the principle that they should have opportunity for feedback on a project that directly and severely affected them, the case was thrown out¹⁰.

Of course, the publication of the Bakun EIA did little to reassure critics. Not only did it specifically exclude assessment of the impact on the communities, but the assessment of the project generally was full of omissions, mistakes and questionable assumptions. The fact that it was published in English and cost a significant amount of money for each of its several parts meant too that it remained inaccessible to the vast majority of people, including indigenous peoples.

Principles ignored

All of this is instructive. Neither the federal government nor the Sarawak state government were interested in public participation in the Bakun HEP. It was to be imposed, whatever the flaws and the consequences, as part of an agenda about which many local indigenous peoples and many Malaysians generally had serious reservations. But these were not up for consideration.

It is also instructive in that such neglect of full and proper discussion, indeed such intransigence to even the beginning of a debate, has ensured the respective governments have ridden roughshod over basic principles of planning of such projects, and specifically, over principles of resettlement.

For example, the World Bank and other institutions have provided a number of guidelines relevant to the kind of mistakes that must be avoided in resettlement projects. Included in these is the clear exhortation that Environmental Impact Assessments should include assessment of impact on communities, and that separate EIAs should be done on proposed resettlement sites. The latter should include an assessment of host population, resource use patterns, use of area by non-residents, formal legal and customary use-rights, inventory of fauna and flora, social infrastructure, assessment of public health conditions and

institutional assessment. The World Bank Environmental Assessment Sourcebook has more details. But no EIA at all was carried out for the Sungai Asap site to be used for the Bakun displaced people, and, as we have noted, the EIA done for the Bakun project specifically excluded any assessment of the impact on affected communities.

Further principles espoused by the World Bank and reports such as Rousseau's include the need for early and full consultation with the affected communities ("*participation*"), the need to put aside prejudice in order to fully incorporate the needs and ambitions of the affected communities and to preserve as far as possible their autonomy and cultural identity, the need to provide a series of alternatives, the need to ensure that adequate and properly fertile land be provided at any new locations, the need to avoid any traumatic, wholesale change in lifestyle and environment, and the need to support, monitor and evaluate any resettlement project as it develops. Specific warnings mentioned included the probability that the Sungai Asap site had inadequate land both in terms of quantity and quality, that the attitude of the state authorities was forcing the indigenous peoples into an alien, monetised economy that would lead to a loss of autonomy, dependency on jobs and state support, migration (given Sungai Asap was unlikely to be able to support enough jobs to sustain the community) and indebtedness. It was stated that all this would lead to or intensify social problems, including a worsening situation for women and the elderly, gambling, alcoholism, and general family and community breakdown.

Underlying all of these suggestions, borne from experience, is that the last thing that should happen is that indigenous peoples are told where to go and what to do: in other words, are presented with a *fait accompli*. Yet this is exactly what has happened in the case of Bakun, and was exactly what happened in the case of Batang Ai.

The Bakun Resettlement: The Fact-Finding Mission, May 1999

In now turning our attention to describing the process and consequence of the Bakun resettlement in more detail, we can note that much of the information presented here comes directly from the indigenous communities themselves. This has recently been confirmed and supplemented by a Fact-Finding Mission, sent by the Gabungan in May 1999, as a response to a number of grievances and complaints emanating from the Bakun area. This Mission interviewed over 300 people affected by the project, including state authorities, and its full report has just been published. Those interested in more information about the resettlement exercise should read this¹¹.

In the report, the process and impact of the Bakun resettlement is described in considerable detail. At the outset, it states that:

members have apparently benefited from contracts from the construction either at the Bakun site itself or from the resettlement site (or both). This conflict of interest has merely added to the lack of credibility this committee enjoys within the majority of the affected indigenous peoples.

When local people attempted to set up alternative structures, which included such groups as the Indigenous Peoples Development Centre and the Bakun Peoples' Regional Committee, these were denigrated by the state authorities and their concerns ignored. And the controls over public meetings, debate and travel already mentioned further indicate the desire of the authorities to rail-road the project through with no questions asked.

Resettlement is never easy – it is, after all, forced relocation and subject to many problems and trauma. The relocation does mean that a new life must be made for the displaced people. In one sense, therefore, it is an opportunity for those displaced people to evaluate their options, to decide on (possibly different) alternatives and to become involved in maximising any new potentials for enhancing their, and their children's, future. But, far from allowing the Bakun resettlement to promote good, vibrant discussion about the future for the affected indigenous communities, the whole Bakun process has been one of (further) disempowerment and marginalisation, in which the indigenous peoples have been treated like objects in a process that has excluded them from input and debate and has basically reduced them to follow an agenda and a definition of 'development' that has been written for them. It is hardly surprising, therefore, that the morale within the communities has been steadily deteriorating and could now be described as at an all-time low.

Threats to move

The fact is that many of the indigenous peoples were extremely reluctant to move to a new site which they had little knowledge about and were deeply suspicious of, despite (or even because of!) the promises of the state government. The latter then resorted to a number of inducements and threats to ensure most of them moved.

Firstly, it threatened to withhold compensation payments.

Secondly, it closed schools and clinics and other facilities at the old site.

Thirdly, it threatened that moving elsewhere would be illegal and would run the risk of subsequent eviction.

After a series of delays, the first families, the Ukit from Long Ayak, were moved in September 1998. Subsequently, families from other (but not all) communities have moved, the latest (Batu Kalo) having moved in April 1999. It should be noted that, despite the threats and inducements, not all families from each community have moved to the new site, and some people in some of the longhouses have also decided to move to other sites, not designated by the

government. According to latest figures, the situation is as follows:

Longhouse	Original no. of families	No. of families who have moved	No. of families remaining on the Balui
Long Geng	250	205	45
Rumah Daro	45	43	2
Batu Kalo	75	41	34
Bato Keling	90	78	12
Long Bulan	170	133	37
Long Jawie	205	196	9

Residents on the Balui who have chosen to build new longhouses further upstream or elsewhere:

Longhouse	Resettlement Site
Long Geng Batu Kalo	Long Lawen - have already shifted Up the Sg Bakau - new houses are almost completed.
Batu Keling Long Bulan	Apau Bulu - have already shifted Sang Anau, an old logging camp - have already shifted
Long Jawie Long Dupah	Have identified a site. Tubau - a Kayan settlement area.

In all communities, whether they have moved or not, there are many and serious complaints about what has happened to them. It should be noted that the state authorities have announced that all communities will be moved by August 1999.

In effecting the move, the state authorities have continually demonstrated their lack of respect for indigenous peoples and their culture, their lack of concern in involving and supporting the indigenous communities in the trauma of the resettlement and their lack of respect even for their own laws and procedures (let alone any principles of resettlement, as we have noted).

Compensation

This has been demonstrated through, for example, the way compensation payments were assessed and (not) paid. To arrive at a figure for compensation for the affected indigenous peoples, the state government had to do two things. Firstly, a survey of all land and assets (including houses, crops, fruit trees, medicinal plants and burial sites) claimed by individuals and communities needed to be undertaken. Secondly, a process of valuation needed to be worked out. On both these issues there exist widespread complaint amongst the indigenous communities.

Most of the residents claim that the major portion of their land had not been surveyed. They stated that only relatively small areas in the vicinity of their longhouse were taken into account.

This reflects the underlying prejudice and negation of indigenous native customary claims to land which has long been a feature of the Sarawak state government's policy. For indigenous peoples, their land comprises of particular land serving particular purposes. Their *temuda* represents the area of land around the longhouse, including their farmed land. Their *menoa* is the area of land (forest) which is their ancestral domain and which they use for hunting and gathering. Their *pulau* is an area of land set aside for water catchment and for material extraction for building, for example. *Dampa* are cultivated fields a distance away from the longhouse.

Each part of this land serves a particular purpose in sustaining the spiritual and economic health of the community. If proper respect is to be paid to the affected indigenous communities, and due compensation paid, then all such land should be recognised for what it is and what it is worth. It could be added that, in order to attempt to preserve as far as possible the cultural identity of the communities, similar land should be made available at the alternative site(s).

However, neither has been the case. The Sarawak state government has been reluctant to recognise anything more than *temuda*, and has in fact enacted successive land legislation which has consistently undermined recognition and rights to *menoa* and to *pulau*. In the case of the survey of the Bakun communities, it would appear similar denial was practised. And land allocated at the new site is inadequate both in quantity and quality, despite promises to the contrary.

The lack of transparency in the compensation process has also led to confusion as to how exactly compensation figures were arrived at, and suspicion of irregularities. The amounts of compensation vary widely from individual to individual and from community to community. For individuals, the amount may be as little as nothing to as high as the reputed payment (not confirmed) of RM700,000 to a particular person. It is the case that such compensation in the vast majority of cases is nowhere near the cost of resettlement, particularly in relation to the RM52,000 being charged for the new home (see below). The alleged enrichment of those close to the government is an issue mentioned in the Mission report, which also detailed worries about how part of the compensation is paid into a community fund, but the management and use of which is again unaccountable to the majority of the people, being held by the government-appointed leaders.

It may be noted that at least one court case is pending, regarding the way the assessment has been done.

The site and housing

Lack of respect by the state authorities is also seen in the condition of the site. Again, despite the rhetoric of a wonderful future, the site leaves much to be desired. It has basic facilities, like schools and clinics, but its condition is very poor. There are inadequate roads, meaning that access to and from the site is difficult. No lorries can get in to perform, for example, rubbish collection, which means rubbish is just piled up wherever, posing a serious health hazard. The sewerage and drainage systems are wholly inadequate: the sewerage drains into the local river, rendering the latter unfit for bathing or any other use. Stagnant pools of water because of already broken drainage pipes again are health hazards, being mosquito breeding grounds amongst other things. All this threatens not only the health but also the longer-term sustainability of the communities.

Most of all, the conditions of the 'new' houses are already very, very poor. There are broken doors, shattered walls, leaking and stagnant drains, rickety stairs, collapsing bannisters, and broken windows. The materials used are cheap and shoddy; the finish to the houses has been left undone.

The design of a longhouse should reflect the culture of its people. But in Sungai Asap, each new longhouse is of a standardised design, each longhouse having fifteen *pintu* (or families). This is clearly culturally inappropriate. So too is the fact that the common verandah of each longhouse is too narrow for it to perform the kind of communal meeting-place and ceremonial function that was so crucial in the old longhouses, and some of the materials used in the building are actually considered taboo by some of the indigenous communities. Far from allowing each indigenous community to build its own longhouse, an English company, Bucknalls, with no previous experience of Sarawak, was appointed project consultant, and various sub-contracts given to those favoured by the state government.

To add insult to injury, each family is being charged some RM 52,000 for the new home. This is a very inflated price when compared to other low-cost housing in Malaysia. No one has justified it. Indeed, no one from the state government even explained to the indigenous peoples that this was the case. It was only when the first families arrived, and were made to sign a document in English before they got their keys, that it was realised that something was up¹². On closer investigation, it was found that this document not only set the price for the house, but committed the families to a loan for the monies to be paid back over 25 years. Nothing has been explained and no family has a copy of the long document (which anyway most of them would not be able to understand). What was explained to them was that they would not get the keys unless they signed, and they would not get the balance of compensation money due to them unless they signed.

It was also discovered that the compensation paid for their old homes (much, much lower than RM52,000,

despite most of them being of far better construction and size) was not to be paid to the people but was used to offset their new compulsory house purchase.

All of this is legally as well as morally questionable.

Sub-standard procedures

The lack of respect and concern shown by the state authorities to the indigenous peoples and their future is compounded by the fact that in the design and construction of the new site, the state government's own rules have been broken. The building plans for the settlement were never submitted by the statutory body, the Sarawak state government agency, the Land Consolidation and Development Authority, to the appropriate District Council, until the time they needed the Occupation Permit just before the resettlement exercise. Nor was any Certificate of Fitness issued for the houses.

In the words of the Fact-Finding Mission Report: "*All this requires urgent investigation.*"

Many would argue that the indigenous peoples were removed to the site under false pretences.

The Implications: Disintegration and Disaster?

Over and beyond the major deficiencies of the resettlement site and the planning and process of the whole project, the longer-term impact of the Bakun resettlement scheme (which is already becoming obvious) is one where, to put it bluntly, the whole community is in danger of completely falling apart. People are already desperately unhappy. Roles played by different people in the old community, by the elderly, by women, by the young, are now becoming irrelevant and are being substituted by a different hierarchy, in which men and money play the critical part. The destruction of community cohesion which follows has seen the rapid increase in anti-social behaviour.

This all stems from the agenda imposed by the state authorities on the indigenous communities, which has underpinned the entire way in which this project has been conducted. For the state authorities, traditional indigenous culture and land use is deemed 'unproductive' and a waste of human and resource potential. Of course, such potential is defined in purely monetary and commercial terms. So, when the state government's spokespeople declare that indigenous peoples need to be 'brought into the mainstream of development', this translates to a need to be brought into a monetised economy where they became integrated into a waged economy and their land can be developed (by others) into whatever is the most profitable enterprise.

This is what has happened. The desire to build the controversial Bakun Hydro-electric project, complete with the removal of indigenous peoples from the reservoir area and surrounding land (highly valuable for timber and other resources) and the forcible removal of these people to a site to which they were condemned to be waged earners

all indicate the priorities of the state government. They are not the priorities of the indigenous peoples.

No effort was made to supply land in large enough quantities and appropriacy at the new site to allow the indigenous peoples to continue their farming and hunting/gathering activities. It is arguably crucial to the success or otherwise of a resettlement scheme like this one that there be provision of adequate land to substitute the land used at the original site. This is both to allow the continuity of cultural practice, cohesion and identity and, more practically, to ensure food sustainability can be maintained.

It is a sad fact that the authorities had already been made aware of the unsuitability of the Sungai Asap site with regard to provision of adequate land for the indigenous peoples. The SAMA consortium had stated that the soil of the new area is mediocre and unsuitable for cash-cropping. It stated that the area was too small for the proposed population. It stated it lacked needed jungle resources, despite the fact that the communities relied for over one-third of their income from such resources. Rousseau also stated that the resettlement area "*is inadequate. Planners have failed to consider the current needs of the people; they have failed to plan for a population increase; they have failed to consider the needs of the people from the lower Balui, who currently face a shortage of land. The Government is also ignoring the fundamental issue of land tenure. Without long-term secure rights to land, effective development is impossible; feelings of insecurity will sap the enterprise of the population concerned*"¹³.

It may be noted that the actual amount of land given to each family was reduced from early promises of ten acres, to later promises of seven acres, to a reality of three acres.

Several consequences have emerged from this. Firstly, the pressure on the existing land has meant almost immediately that there is a severe shortage of fish, game and jungle products. This, together with the lack of vegetables and fruits, has meant that the communities have been thrust immediately into a wholly cash economy, spending significant sums (for them) on purchasing food and materials which had previously been obtained for free. High transportation costs and control by a small minority also means that the cost of such purchases are relatively expensive. Secondly, there is emerging conflict within the resettled communities as well as between the resettled communities and other indigenous peoples already in the area, over land. Thirdly, in an attempt to at least retain some modicum of self-sufficiency, some of the communities have begun cultivating neighbouring stateland, again bring them in conflict both with neighbouring communities and the state government. All is a product of the initial poor planning.

No jobs, no sustainability

The lack of alternative land and the terms and conditions imposed on the resettled people means that they are now completely immersed in a monetised economy. In contrast

to the situation at their original homes, everything now costs, including food, water, housing, electricity and transport. The overriding question is: how will they pay? Once the compensation money has gone, and for many this either has already happened or is imminent, what is left?

The fact is that by defining development the way they have, the state authorities have made it the case that the sustainability of the new community completely depends on the close availability of jobs. In the preliminary promises, the state government had indicated that these jobs were to be on oil-palm plantations. However, despite the fact that five companies have apparently been earmarked oil-palm projects, only one has been started and this will take at least five years to mature to the point where numbers of workers will be needed¹⁴. This is leaving aside the question of whether the substitution of a relative autonomous, sustainable, self-regulating and cohesive culture and lifestyle for one inherently unstable and material is actually a 'development' in any sense of the word.

The economic unsustainability of the new site means that nothing else is sustainable. This has meant already the out-migration of the economically active, given that they are now dependent on waged employment, little opportunity for which exists at Sg. Asap. One can already see Sg. Asap as turning into a place only for the old, the very young and some of the women. The rest will have fled. The communities will have been destroyed.

Roles and lives affected

More than that, the resettlement has had, and will continue to have, serious and negative impacts on the roles and lives of people in the community. For example, it has already impacted badly on the roles and lives of women. From having played a vital role in food production and income-generation activities, women are now increasingly reliant on men for material resources and for labour. The distance to the little land made available means women can no longer get there easily. Their mobility has been compromised. They are reliant on men for transport. As a result, many women are becoming house-bound. There is already complaint of the boredom of the long days. Women are also now becoming the sole carers for the children and the elderly. What was a more egalitarian way of life in the old community, where productive and reproductive roles were shared much more equally, is fast becoming one that favours men as 'heads'. The roles of women are quickly being transformed and limited into subordinate, secondary and supportive ones. Their old lives were very different.

The fact that the compensation was paid to the men has not helped women be equal partners in decision-making and resource allocation. Yet the pressure of household expenses means the burden of budgeting falls more on the women.

And because employment has now become the major (only) means of earning income, the well-documented

discrimination against women in waged employment will further erode their position and increase their vulnerability to abuse and exploitation. There is little equality for women at the workplace. They are paid less, they are usually 'last in, first out', they face discrimination in promotions and training, they face particular health problems and their labour is often casualised to ensure greater flexibility for the employer and, the bottom line, greater profits. Their subordination at the workplace reflects their increasing subordination within the family and community. More than this, for those women who do get jobs, they will have to combine their waged employment with their responsibilities in the home. They will effectively be working a "double day".

And an increase in social problems may also have particular, negative consequences on women, not the least of which may be an increase in violence against women.

All this has reduced the contribution, status and respect of women, and has thrown them into a new monetary culture which has a proven track record of undervaluing women and which is likely in the end to make them little better than marginal members of their community.

The same is true for the elderly. Their vital role in maintaining cultural cohesion and continuity is already fading in the new site. Lack of respect and lack of tolerance for their dependency means their future is particularly bleak.

It is a little different for the youth. In their traditional longhouses, they took part in the economic activities of their communities, gathering forest products, hunting, growing crops and partaking in the traditional practices of the longhouse. At the new site, these activities are no longer integral to their lifestyle. In the absence of work or other opportunities (there is a significant absence of facilities for the youth), many of the younger men have chosen instead to indulge what money and time they have on such things as motorbikes and alcohol. Dissipation of time and money seems to be the norm. It is not sustainable.

The younger women also worked on the farms and participated in the communities' cultural and social gatherings at the original site. But now, in the words of one younger woman: "we just sit at home - eat, sleep, eat, sleep". Another woman added: "We are no different to the pigs that are locked up in the pen".

The excessive presence of alcohol has implications for women: it puts them at increased risk of violence.

Family and community division

The lack of jobs, opportunities and anything to do is unsurprisingly causing family division and schism. People are already migrating out, families are dividing. Where families break up, there will be accompanying trauma and sadness. As one woman said: "We used to all be together and really happy. Now we are split up. One child here, one there. I want to forget this place. Tomorrow I am coming with you back to my kampung."

And one resident has described her existence during the last few months at the new site as "...like living in a volcano waiting to erupt". Another says "...it feels like flying, you know that you are going to drop one day".

Lessons ignored

This is no more than what the experience of other resettlement schemes has told us. The trauma of the move, the lack of continuity in lives and culture, the lack of alternatives and of course the lack of work see the emergence of an apathy, a disenchantment and straightforward depression within the whole community. Social problems and indulgence in destructive activities like gambling and drinking have resulted.

Again, warnings of social and cultural dislocation, and the particularly negative impact this has on women, appear to have been ignored by the state authorities. There would appear very little that has been done to anticipate any of the problems about to be listed, and very little initiatives taken to attempt to combat any or all of them. There is no clear complaints procedure, no proactive support mechanisms, and state officials seem desirous of denying all responsibility rather than assessing and tackling the problems. No attention at all seems to have been given to the particular problems and effects women might face. Again, to repeat, this represents a gigantic failure in planning.

Development for whom?

Yet they call this 'development'. It is not a development that has either been wanted or asked for by indigenous peoples. They were not asked what they wanted. It is a development to which, in this instance, the Bakun HEP has almost literally cemented their fate. In this, Bakun shares a similar experience to many large dams around the world. It is a project which has never been accountable, and this means it is unclear who and to what extent has benefitted from the project. They are the few. What is known is that the vast majority of the indigenous peoples affected by the project have suffered – and have suffered almost irretrievable damage.

At the level of United Nations, within multilateral institutions like the World Bank, within indigenous and other organisations all over the world, fundamental principles regarding policies affecting, and treatment of, indigenous peoples have been clearly stated. But large dam projects like Bakun have a poor track record in the heeding of any of this. Certainly the Malaysian and Sarawak government have paid no attention to any of these principles?

In the Malaysian Charter of Human Rights, a document produced through an extensive consultation exercise involving over 50 non-government organisations, Article 16 states:

"Indigenous peoples are entitled to self-determination. By this is meant their natural and inalienable right to retain and

control the land and all resources found on their traditional territories, and the right to choose their own way of life.

"They have the right to practise and develop their culture and indigenous religion and to maintain their cultural identity."

But these basic rights have been denied to them. They have been denied not just in examples like this Bakun resettlement scheme, but in their treatment right across Sarawak and Malaysia as a whole. The abuse of their rights is always justified by government spokespeople as necessary for 'development'.

But, in the apt and oft-quoted words of an indigenous spokesperson: "Development does not mean stealing our land, our culture and our dignity as human beings. That is not development, but theft."

This article was produced as a joint effort of the Gabungan, the coalition of non-government organisations in Malaysia which have consistently opposed the Bakun project.

Notes

- ¹ The Malaysian government's official line, as announced by Prime Minister Mahathir in the lead-up to UNCED, was that the Bakun project was cancelled as "proof that we care about the environment".
- ² Star, 20/9/94.
- ³ The exchange rate between the Malaysian Dollar (Ringgit) and the US Dollar was about 2.5 : 1 in 1993. It climbed to about 4 : 1 by 1999.
- ⁴ See Power Play, published by Insan, Kuala Lumpur, 1996 for a description of the earlier history of the Bakun HEP. The book is particularly strong on the way in which the project has fitted into the patronage politics of Malaysia, with beneficiaries being close to the political elite. This is arguably one reason why the project was so ill-devised and so constant in its failings.
- ⁵ For a recent exposition of the history of conflict between indigenous groups and the State in Sarawak, see Tanah Penghidup Kitai – The undermining of indigenous land rights and the victimisation of indigenous peoples in Sarawak, - published by Ideal-Times, Sibul, 1999.
- ⁶ New Straits Times, 18/8/95
- ⁷ New Straits Times, 1/8/95
- ⁸ Malaysian Business, 16/8/95
- ⁹ New Straits Times, 31/1/94
- ¹⁰ The initial case was actually won, but was overturned on appeal. The lack of judicial independence in Malaysia provides a further barrier to any securing of what little legal rights or entitlements may exist.
- ¹¹ Empty Promises, Damned Lives – The Report of the Fact Finding Mission, Suaram, Kuala Lumpur, 1999
- ¹² For example, when the people of Long Ayak moved, they had a trip of 6-10 hours by longboat and another 3 hours by landcruiser, before they arrived at the site. On arrival, they were informed by the State Administrative Officer that they had to sign the Sales and Purchase Agreement in order to obtain their keys. They did not understand it, but in these circumstances, what choice did they have? The trip back would have cost over RM1000. And without any explanation as to the contents of what they were signing, they thought it was just a procedure to get the keys. The people of Batu Keling also faced the same situation.
- ¹³ J. Rousseau: The Bakun HEP and Resettlement", paper presented to a seminar on the Bakun project, December 1995.
- ¹⁴ The fact is too that oil-palm plantations have shown a marked preference for immigrant labour. It is instructive that James Masing, the Sarawak state government person responsible for the resettlement, could offer no guarantee to the resettled people for jobs, at a recent press conference in May 1999.

PHILIPPINES



A CASE STUDY ON THE IBALOY PEOPLE AND THE AGNO RIVER BASIN, PROVINCE OF BENGUET

by Jacqueline K. Carino

I. General Background

A. The Philippines Indigenous Peoples

The indigenous peoples in the Philippines today number about 6.5 million to 7.5 million or about 12% to 16% of the total population of the country.¹ Historically, these peoples resisted colonization by the Spaniards for three centuries from the 16th to the 18th century. Because of this resistance to colonial rule, they were able to maintain their indigenous lifestyles and culture practiced by their forefathers since time immemorial or since before the arrival of colonization. They are thus now referred to as "indigenous cultural communities" or people whose "many generations of ancestors have lived in what they consider their home territories, who continue to live in, or closely identify themselves with, communities within these territories; and who have retained much of their ancestral lifeways which are quite distinct from those of the rest of the population of the country."²

The Philippines' indigenous cultural communities can be classified into seven major groupings. These are the *Igorots* of the Cordillera, the tribes of Caraballo and Cagayan Valley, the *Negritos* or *Agta*, the *Mangyan*, the people of

Palawan, the *Lumad* of Mindanao and the *Moro* people. Within each major group are smaller but distinct sub-groupings of indigenous people.

The Cordillera Region, a mountainous region in Northern Luzon, Philippines is homeland to more than 1 million indigenous people belonging to at least eight distinct ethnic groups but who are collectively known as the "Igorots". The *Ibaloy* is one of these distinct groups of indigenous people in the Cordillera. *Ibaloy* people live in the southern portion of Benguet Province, occupying eight out of the province's 13 municipalities. In 1980, government figures placed the *Ibaloy* population at 93,000. This population increased to 174,337 by 1986.³

B. Philippine Laws on Indigenous People

Throughout history, the experience of the indigenous people of the Philippines has been one of discrimination and displacement. Since the period of Spanish and American colonial rule, until the time of the Republic of the Philippines, state policy in relation to the indigenous people or cultural minorities has been directed at their assimilation or integration into the mainstream of Philippine society and at the expropriation of their land and resources for the "national interest".

When the colonizer Ferdinand Magellan planted the Spanish flag on Philippine soil in 1521, he declared that all land in the Philippine archipelago belonged to the King of Spain. Thus started the Regalian Doctrine which declares all public lands as property of the State, represented by the King of Spain. This doctrine was formalized with the passage of the Maura Law in the year 1894 which required that all lands owned privately be registered with the government. Titles would serve as the proof of private ownership of land in order to be excluded from the public domain. Since the forefathers of today's indigenous people were not subjugated and were at that time outside the control of Spanish colonial rule, they did not bother to apply for titles. Their lands were thus considered by the State as public lands and open for use by the State despite having been occupied and used by these people continuously for many years.

The American colonial government took over the Philippines in 1898. Under their rule, the idea that all land belonged to the State except for those with Torrens titles was affirmed through the passage of the First Public Land Act of 1902. However, this concept of land ownership through proof of title, imposed on the Filipinos by the colonizers, was put under question through the efforts of an Ibaloy man. This man, Mateo Carino, owned a 146-hectare parcel of land that he and his ancestors had used and occupied since time immemorial. He claimed that the land was owned by him pursuant to Ibaloy customs and was not part of the public domain. The case was brought to the Philippine Supreme Court which decided against Carino and declared that the land was public land.

Remarkably, the decision reached the United States Supreme Court and was reversed. In 1909, the US Supreme Court overturned the decision of the Philippine Supreme Court in **Carino vs. Insular Government**. It recognized Carino's native title over his land. The decision in part reads: *"When, as far back as testimony or memory goes, the land has been held by individuals in a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land."*

In recent years, particularly since the administration of President Corazon Aquino in 1986, motions have been made by the national government to include the recognition of indigenous peoples' rights in national policy. The Philippine Constitution of 1987 contains particular provisions to this effect.

Section 22 of Article II reads: *"The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development."* Section 5, Article XII of the same constitution reads: *"The State, subject to the provisions of this constitution and national development policies and program, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being."* Further, in Section 17, Article XIV, *"The State shall recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their culture, traditions and institutions. It shall consider their rights in the formulation of national plans and policies."*⁴

There is also a law recently enacted by the Philippine Congress known as the *"Indigenous Peoples Rights Act (IPRA) or Republic Act No. 8371"*. This law passed and approved on October 29, 1997 is entitled *"An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/ Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefore and for Other Purposes."*⁵ It states: *"The State shall protect the rights of ICC's/IPs to their ancestral domains to ensure their economic, social and cultural well-being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domains."*⁶

Although these national laws and policies exist recognizing indigenous peoples' rights, they have only been passed recently, as if in hindsight, to retrospectively address the rights of the indigenous people. However, the damage has already been done and the land rights have already been violated throughout history. Particularly for the Ibaloy people of Southern Benguet, major developments including mining, dams, and urbanization have had the total effect of impoverishing the Ibaloy people, and excluding them from the intended benefits of these legislations.

C. Power Development Plans

The power supply in the Philippines is dependent largely on oil-based thermal power stations. In 1997, the major sources of power included oil, coal, geothermal and hydroelectric power. Oil-based power plants produced the highest power output, reflecting the country's dependence on imported oil. The next highest power source was coal, followed by geothermal energy, diesel, and hydroelectric power. The total power consumption for the whole country in 1997 was 39,875 Gigawatt-hours (GWH).⁷

The 1993 to 2005 Power Development Program of the Philippines forecasts a yearly total increase in power demand of 735 MW for the whole country for the period 1993 to 1998. From 1999 to 2005, the yearly increase in power demand is projected to be 1,700 MW. The power program thus calls for a total capacity addition of 20,698 MW during the period 1993 - 2005.⁸

In order to supply current and forecasted power demands, the government's Department of Energy proposes the development of the country's untapped power resources. The present policy for power development in the country is to significantly reduce its dependence on imported energy sources, specifically oil. This will be done by developing other energy sources available locally like coal, hydro-power and geothermal energy.⁹

The Philippines is endowed with several large and medium river systems, many of which are found in indigenous peoples' territories. These rivers are considered potential sources for hydropower generation.

Accelerating the development of hydro-resources is a major strategy of the government in achieving its power objectives. A total of about 14,367 MW of hydropower potential has been identified in 293 sites throughout the country.¹⁰

The Department of Energy has recently drawn up an updated list of the hydropower projects it is considering for implementation. For the period 1999 to 2005, fourteen (14) hydropower dam projects are targeted for construction in different parts of the country (See Table 1). Most of these dam sites are located within indigenous peoples' territories.

Almost all of the projects outlined in the plan are large scale projects. Most are too large to be financed locally, and will thus entail heavy foreign investment and credit. They will also entail heavy environmental and social costs.¹¹

II. The Agno River Basin

The Agno River is one of the five main river systems flowing through the Cordillera Region. The river originates in Mt. Data at an elevation of 2,300 meters above sea level. It flows southward parallel to the main ridge of the Cordillera Central mountain range, turning gradually westward, bisecting the province of Benguet as it leaves the mountains. At about 110 kilometers from the source, it enters into the Central Plains of Luzon where it meanders southwest and northwest in a long sweep to meet the South China Sea at the Lingayen Gulf.¹²

The tributaries of the Agno River are generally short and steep. The most significant eastern tributaries include Bokod River and Benneng River. The major western tributaries are Bantay River and Twin River. The Agno River Basin is a rich valley elongated in the north-south direction and bounded by two steep mountain ranges. The highest points of the watershed are Mt. Tabayoc at Elevation 2,812 meters above sea level in the east and Mt. Osdung at Elevation 2,550 meters above sea level in the west.

The Agno River watershed consists mostly of grasslands with minor portions covered with secondary growth forest. Mining concessions, particularly Benguet Corporation, Philex Mines, Baguio Gold Mining Co., Atok Big Wedge and Itogon-Suyoc Mines have been operating within the Agno River watershed for more than 90 years. Land slides are a common occurrence within the watershed. Extensive weathering of exposed formations are observed especially in the mining areas, along the river course and along road cuts.¹³

The Agno River flows for the land and its people, the Ibaloy. The fertile land in the river valley hosts hectares of rice fields, vegetable farms, fruit trees and pasture lands found along the river banks from upstream in the municipalities of Kabayan and Bokod down to Itogon. Agricultural products like rice, taro, sweet potatoes, vegetables like beans, mungo, pepper, fruits like mango, santol, avocado, banana, papaya, jackfruit, guayabano (soursop), coffee and even tobacco are grown. Animals are also raised in the pasturelands including cows, carabaos and pigs.

Aside from farming, the Ibaloy people also engage in gold panning along the Agno River. Residents of Barangays Dalupirip, Ampucao, and Tinongdan in Itogon and even as far south as San Manuel regularly go to sitios Pangbasan,

Vito and Kawayan for gold panning. During summer, as many as a thousand gold panners work in the area. The sitios of Pangbasan, Vito and Kawayan along the Agno River are strategic locations for gold strains from the Philex Mines and Benguet Corporation mines through the creeks and rivulets which eventually flow into the Agno.

Riverine resources which the people use include eels, frogs, tilapia, carpa, bonog, and shrimps. There is also an abundance of wild animals in the mountain ranges of Itogon and Bokod. Deer, wild goat, birds, wild fowls and wild boar are still available. The hunting season is year round.¹⁴

III. The Ibaloy People

The homeland of the Ibaloy people is the southeastern portion of Benguet province, which include the municipalities of Kabayan, Bokod, Itogon, Sablan, Tuba, La Trinidad, Tublay, Atok, and part of Kapangan. It has mountainous terrain, and Mt. Pulag, the highest peak in northern Philippines is found here. According to legend, Mt. Pulag is the sacred origin of the Ibaloy people, and also their final resting place in the afterlife.¹⁵

The Agno river basin is characterized by gentler terrain and rolling hills. It is known as the "cultural heartland of the Ibaloy people" as it is along the Agno river that early Ibaloy settlements were established. The name Ibaloy, meaning "people from Baloy" originates from the name of the early settlement Baloy, now abandoned, which was located near the Agno river between Dalupirip and Ambuklao.¹⁶

It is also in this river valley that all of the major Ibaloy families trace their ancestry. The age-old *chiva* or stories and *tuntun* or genealogical narratives are told and retold, whereby family histories are remembered. Going back 15 generations or more to the 16th century, Amkidit of Chuyo and his wife Chamdya of Imbose are recognized as the common ancestors of all Ibaloy.¹⁷

The fertile land along the rivers and the gold ore found in the mountains allowed the emergence of several distinct Ibaloy villages engaged in various economic activities. The early Ibaloy communities were swidden communities planting taro and sweet potatoes on the mountainsides. In the gold-rich areas in Itogon arose the gold mining communities, with houses clustered around the mouths of tunnels. Gold-trading villages were established along strategic mountain passes and trails, which controlled the flow of trade to the lowlands. And finally, the rice-growing villages emerged in the well-watered areas of the Agno river valley.¹⁸

However, all these types of villages were related. Swidden farmers panned gold in the streams and rivers and traded it in the traders' towns. Gold mining communities rented pastureland from agricultural towns, and gold producers in some areas diversified their interests by building rice terraces and appropriating grazing lands.¹⁹

The Agno river basin is a rice-producing area. Rice fields are found in the sloping mountainsides along the river. In addition, swidden farms are found in cleared areas of the forest, which are

Table 1: Proposed Hydro Power Plants in the Philippines (1999-2005)

Project	Capacity	Year	Location
Pasil B/C	42 MW	2004-2005	Batong Buhay, Kalinga-Apayao
Nalatang	45 MW	1999	Guinaoang, Benguet
Bakun A/B	45 MW	2002	Bakun, Benguet
Amburayan	93 MW	2004	Kapangan, Benguet
San Roque	390 MW	2005	San Manuel, Pangasinan
Kalayaan 3/4	300 MW	2005	Bay, Laguna
Kanan BI	112 MW	2005	Infanta, Quezon
Timbaban	35 MW	1999	Madalag, Aklan
Villasiga	29 MW	2005	Panay, Antique
Bulanog Batang	150 MW	2004	Talakag, Bukidnon
Pulangi	300 MW	2005	P. Roxas, North Cotabato
Agus III	224 MW	2001	Baloi, Lanao del Norte
Lanon Hydro	21 MW	2001	SouthCotabato
Pugo D/B/A	44 MW	2005	Jabonga, Agusan

Source: National Power Corporation. Power Development Program (1993 - 2003)

planted to sweet potatoes, potatoes, taro, fruit trees, etc. Fruit trees are also found within the homelots and along the river banks. Animals are grown, mostly for home consumption and for ritual needs. The forest provides game, wood for fuel and houses, and other forest products.²⁰

To the Ibaloy, land is a resource one uses for himself and for others, seen and unseen. It is a resource the occupant shares and exploits with his kindred, ancestors and gods. Above all, it is a resource that is passed on to heirs.²¹

Land ownership is recognized by prior occupation, investment of labor and permanent improvements on the land, specifically irrigation systems and retaining stone-walls of the ricefields. Except for rice fields, properties are supposed to be opened by owners to use by others. The community shares access rights to the forests, rivers and creeks, and the fruits of these lands and waters are open to those who gather them. Only rice fields were owned privately by clans and families, and were passed on to heirs.²² Inherited land is valuable and it is felt that selling inherited property is taboo, as it is supposed to be preserved for the next generation and retribution from the ancestors will result if the taboo is broken.²³

Traditional religion teaches that spirits of the deceased go to dwell in a parallel world and maintain an interest in their descendants, especially those who manage property first developed by that ancestor. Ancestral dissatisfaction with property management can result in barrenness, madness, bad luck, poverty, ill-health and death. The *mambunong* or native priest intercedes on behalf of the living with these ancestral spirits. Physical and mental health, especially where Western medicine has been unable to effect a cure, bad luck, unusual dreams or any other deviation from the normal may result in a *mambunong* being summoned to trace the offended spirit and determine propitiative requirements. These usually involve animal sacrifice. Ancestors demand material objects either as redress or simply to meet their own needs in the afterlife.²⁴ Burial grounds are sacred and are cared for by the Ibaloy as a sign of respect to their ancestors.

The Ibaloy are known for their elaborate rituals which require the butchering of a host of animals. The *peshet* or the rich man's feast is the most expensive. In the old times, the wealthy individuals were expected to celebrate this ceremony six times. For the first *peshet*, three pigs must be killed for ceremonial purposes, five at the second, six at the third, eight at the fourth, ten at the fifth, and twelve at the sixth and last. In addition to the ceremonial animals, large numbers of pigs, carabaos, cattle and horses were killed to feed the guests. The old Jose Fianza of Dalupirip is said to have completed these ceremonies, and after him, his son Mariano did the same.²⁵

Aside from riceland, the *baknang* or Ibaloy elite owned large pasturelands for their herds of cattle. The cattle was used for ritual purposes and for loans or gifts to the poorer of their kin for their own set of rituals. This had the effect of further consolidating the power and positions of the *baknang* in the community.²⁶

IV. The Agno River Basin Development Project

After World War II, the Philippine government under President Manuel Roxas saw the need to address the insufficient and unstable supply of electric power in the country. The Bell Trade Mission, which was sent by the American government to the Philippines, recommended a search for new sources of electric energy.

In 1946, President Roxas directed the National Power Corporation (NPC) to conduct a survey of the country's electric power potential. The NPC, in cooperation with Westinghouse International, did the survey and prepared the Philippine Power Program. This program had as its main feature the Agno River Basin Development Program. The Agno River, one of the largest rivers in Luzon, was said to have a hydropower potential of 400,000 kilowatts. The Agno river was thus earmarked for exploitation to meet the country's growing electricity requirements.²⁷

The Agno River Basin Development Program (ARBDP) originally planned for the construction of six dams along the Agno River. These dams were to be constructed in Ambuklao (Agno I), Binga (Agno II), Tabu (Agno III), Tayum (Agno IV), San Roque (Agno V) and Lubas (Agno VI).

The first of the dams to be built was the Ambuklao Dam in Bokod which began construction in 1952 and was completed in 1956. The dam had the distinction of being the highest earth-and-rockfill dam in the world at that time. It cost a total of P132 million, P40 million of which was financed by the Export-Import Bank of the United States of America. Equipment and technical services were provided by another American firm, Guy F. Atkinson and Company. The dam's capacity was 75 megawatts (MW) of electricity.

In 1956, the second dam along the Agno River started construction. This was the Binga Dam in Barangay Tinongdan, Itogon. It was completed in 1960 under the administration of President Magsaysay. The Binga Dam cost P80 million and had a capacity of 100 MW.²⁸

The third dam along the Agno River was supposed to be constructed in Tabu, in Barangay Dalupirip. This dam was never built because of protests by the affected people starting as early as the 1950's. A renowned Ibaloy woman, Cecile Afable, who was then Technical Assistant for Cultural Minorities, rode a horse down to Dalupirip and Tabu from Itogon Central to inspect the proposed damsite. Not long after, in 1956, she accompanied Ibaloy leaders Mariano Fianza and Calixto Fianza to appeal to President Magsaysay to spare the Ibaloy people of Dalupirip and nearby communities the fate of Ambuklao and Binga. President Magsaysay made a pledge that Agno III would not be built in Tabu.²⁹

Another attempt was made in the 1970's to build the Tabu dam. A survey for the dam had been conducted and the Ten Year Energy Program for 1979 to 1988 of President Marcos predicted its completion by the year 1990.³⁰ The Ibaloy people of Dalupirip and Tinongdan again protested against the project. Women in Calew, Dalupirip rolled rocks down the mountainsides to stop surveyors from pushing through in the area. Finally, President Marcos was forced to cancel the plan for Agno III in Tabu and he signed a handwritten promisory note stating so.

During his presidency, Fidel Ramos made a similar pledge that Agno III would not be built in Itogon municipality. However, in 1993, he revived the plan to build the third dam along the Agno River. This time, it is called the San Roque Multipurpose Dam Project (SRMDP). The proposed dam is being built a few kilometers downriver of Itogon, in Sitio Bulangit, Barangay San Roque in the municipality of San Manuel, Province of Pangasinan, President Ramos' home province.

The San Roque Dam is part of the government's strategy for developing alternative power sources and lessening the

country's dependence on imported oil. It is listed as a flagship or priority project of the National Power Corporation in the Power Development Plan for 1993 to 2005. It has also been identified as an important component of the Master Plan for the Northwestern Luzon Growth Quadrangle under President Ramos' Medium Term Philippine Development Plan.³¹

The objectives of the San Roque Dam are: first, to generate 991 gigawatt hours (GWH) of energy annually out of the dam's installed capacity of 345 MW; second, to provide irrigation for about 70,500 to 87,000 hectares of agricultural land in lower Pangasinan and Tarlac; third, to control the occurrence of floods caused by Agno River overflows in the lowlands; fourth, to improve the water quality of the Agno River by impounding mine tailings within the San Roque basin.³²

Under the present administration of President Joseph E. Estrada, the San Roque Dam is the biggest of the 116 flagship projects of the government. The president has expressed his desire to see the dam completed and operational before the end of his term in 2004.³³

Once completed, the dam will reportedly be the biggest in Asia with a height of 200 meters and a length of 1.13 kilometers. Its crest elevation will be 297 meters above sea level. The project will cost approximately US \$ 1.19 billion. A private company has won the contract to build the power plant and is presently starting construction. This is the San Roque Power Corporation (SRPC), a private consortium composed of two Japanese companies, Marubeni Corporation and Kansai Electric Power Company, and an American company, Sithe Energies. (There are recent unconfirmed reports that Sithe Energies has sold its interest in the project due to the opposition by affected communities.) This consortium will construct, operate and maintain the power plant under a Build-Operate-Transfer (BOT) scheme. The SRPC has acquired loans from the Japan Export-Import Bank and a consortium of private banks in Japan to fund the construction of the power plant. The NPC is now in the process of acquiring another loan, also from the Japan Export-Import Bank, to finance the non-power components of the project.³⁴

V. Effects of the Agno River Development Program

The construction of the Ambuklao and Binga dams greatly affected the Ibaloy people of the Agno River Valley. Inundation, siltation and declaration of watershed reservations resulted from the construction of these two dams. These, in turn, had dire consequences on the Ibaloy people living along the Agno

Table 2: Main Features of Existing Ambuklao and Binga Dams

Item	Ambuklao Dam	Binga Dam
Catchment Area (sq. km.)	617	860
Mean inflow (m ³ /s)	41.3	57.3
Type of dam	Rockfill	Earth-Rockfill
Height of dam (m)	129	107
Crest elevation (El. m)	758	586
Fill Volume of dam (million m ³)	6.02	1.89
Spillway gate(m x m x nos.)	12.5 x 12.5 x 6	12.5 x 12.0 x 6
Normal High water level (El. m)	752	575
Low Water Level (El. m)	694	555
Effective Capacity (million m ³)	258	48.2
Effective Capacity / yearly inflow	0.20	0.03
Installed Capacity of Power Station	75	100

Source: Japan International Cooperation Agency. Re-study of the San Roque Multipurpose Dam - September 1995

River, aggravated by the lack of clear resettlement plans by the government.

1. Inundation and Unfulfilled Promises for Resettlement

The Ambuklao dam submerged an old Ibaloy settlement in Bokod composed of 200 families. Some 500 hectares of agricultural land owned by the people were also inundated. Water was diverted from existing irrigation canals which destroyed even more farmlands.

The NPC offered to purchase the land at extremely low prices: 10 centavos per square meter of agricultural land, 25 centavos per square meter of riceland, and 50 centavos per square meter of residential lot. Most of the people refused the offer. Others who accepted were never fully paid for their land. Initially, no area was offered for relocation of the affected families.

The Binga Dam, on the other hand, submerged 150 hectares of farmlands belonging to 100 families in Binga, Itogon. No compensation nor relocation was promised. Instead the government invoked the Public Land Act of 1905, using its power of eminent domain. The people of Binga were declared as "leasees" on public land and thus not entitled to compensation nor resettlement.

Relocation of the displaced Ibaloy families was a mere afterthought in the whole plan. It was only after the dams had been completed and the people's lands had been submerged that vague promises for relocation were issued by the government. In the meantime, the displaced people were forced to set up dwellings and forage in the slopes of the Agno River watershed.

For many years, the displaced families demanded insistently for resettlement. The government finally responded in 1968, twelve years after the completion of the Ambuklao dam. A suggestion was made to identify a resettlement site in the adjacent province of Nueva Vizcaya, which was then sparsely populated. But it was only in 1975 that concrete action was taken. This was in the form of Presidential Proclamation 1498 issued on September 11, 1975 by President Marcos.

The proclamation released for resettlement an approximate area of 40,000 hectares of land within the municipalities of Dupax and Maddela in the provinces of Nueva Vizcaya and Quirino. The prospective area was the Conwap-Datgan Valley (also known as the Conwap Valley). However, it was apparent that the proclamation was not primarily aimed at redressing the dam victims but at clearing the Ambuklao and Binga watershed of its occupants who were considered illegal and destructive elements. The proclamation states: *"It is high time that the government adopts measures and makes immediate steps to clear the Ambuklao-Binga watershed reservation of its occupants. On the other hand, it is believed that it is the moral obligation of the government to relocate these occupants and provide them with lands to till."*³⁵

Many more years passed before the presidential proclamation could be implemented. Occasional meetings were called among which was a resettlement conference held in Benguet in June 1977. It was learned in the conference that

the Ambuklao and Binga families were only listed as third priority in the disposition of the land in the Conwap Valley. The original settlers of the area, the indigenous Ilongot people, were first priority. The landless migrants within the provinces of Nueva Vizcaya and Quirino were second priority. The conference also revealed that the disposition of the Conwap Valley would take place not immediately but within the next five to ten years.

In April 1979, news came out of a new resettlement site for the dam victims. This time, the site was to be in the far-flung island of Palawan in the southern part of the Philippines. Palawan was then an underdeveloped island of thick forests. It was widely known in the north to be malaria-infested, aside from being the site of the country's leper and penal colonies.³⁶

In November 1979, 56 displaced families were brought to Narra, Palawan. They were promised six hectares of cultivated land, carabaos, farm implements, food supply, and medical assistance. A loan of P25,000 was also given to last them until they could be on their own. The loan would have to be paid within a period of ten years.

The conditions in Palawan would prove to be unbearable for the Ibaloy families. On December 10, 1979, less than a month after the transfer, 23 of the 56 families unexpectedly returned to Benguet. They reported that the relocation site was actually thickly forested land. Furthermore, they reported that a two-hectare portion of the six-hectare land allotted to each family head, which was supposed to be cleared for immediate cultivation, was not ready. The entire land which had been assigned to the Benguet settlers was not yet subdivided and identified. Other problems encountered were the absence of any irrigation system, lack of food supplies, lack of farm tools and animals, and lack of medical assistance. Other families who returned cited the unbearable climate, insufficient water sources, stony and hardly-tillable soil, and defects in the implementation of relocation terms by the government.³⁷ So unfit for habitation were the conditions in Palawan that a government investigating team sent to the area recommended holding in abeyance the second batch of settlers *"until such time that the farm lots are ready for occupancy."*

By May 1981, only 13 of the displaced Ibaloy families had resettled in Palawan. The rest, then a total of 1,366 family heads, had pending applications filed for relocation. By this time, the issue had drawn the attention of the public. Benguet officials and local media raised the question *"Why not Benguet for its own dislocated?"* Benguet Provincial Board member Alfredo Alumno proposed for the segregation of certain government lands in the province for the resettlement of the displaced families. No action was taken on his proposal.

Then, on June 5, 1981, new promises for relocation were made by Presidential Management Staff Emmanuel de la Cruz. He announced that the Ministry of Agrarian Reform (MAR) had set aside 1,000 hectares of land in the Conwap Valley as a relocation site. However, it was later discovered that the area was not exclusively for the Ambuklao and Binga families. A total of 2,500 farmers from the different

provinces of Benguet, Pangasinan, La Union and Ilocos Sur had applied for resettlement at Conwap. In fact, the Ibaloy families were ranked fifth or sixth priority.

Despite the odds, the first batch of 100 dam victims left for Conwap on August 25, 1981. The Benguet Provincial Board released P10,000 for transportation expenses of the relocatees. The Ibaloy people hiked for many hours through rugged terrain and rough roads to reach the area. When they arrived they were dismayed to find that all areas suitable for occupation and rice production were already occupied. The 1,000 hectares that had been allotted for them belonged to the indigenous Ilongots and other settlers who had been there since 10-15 years earlier. The remaining land were but mountain cliffs and logging areas. Only 30 Ibaloy families could be accommodated with five hectares of land each.

Since that time, there have been no more efforts to provide resettlement for the displaced families of Ambuklao and Binga. On their own, some of these people have settled in Bokod, Baguio City, Itogon and other places. Others continue to eke out a living by farming in the watershed area around the dam sites.³⁸

2. Siltation

An unforeseen effect of the construction of the Ambuklao and Binga dams is the rising siltation of the Agno River. The steadily rising level of silt in the dam reservoirs and along the Agno River upstream of the dams is covering a wider and wider area around the dam and continues to destroy more and more rice fields. In the experience of Ambuklao, the communities of Bangao and Balacbac were located far above the predicted water level of the dam and 17 kilometers away from the predicted edge of the reservoir. These two communities are now inundated due to the rising water level and because of the accumulation of silt and sediment in the dam reservoir and upstream along the Agno River.

This phenomenon of siltation has been lightly dismissed by government authorities as a "natural calamity". Other officials blame the rising siltation on the strong earthquake which struck Northern Luzon in 1990. The Ibaloy people, however, dismiss these explanations as ridiculous and even absurd, since they never experienced the problem of siltation before the dams were built.

Congressman Ronald Cosalan of Benguet, himself an Ibaloy, aptly described the siltation problem in his privilege speech to Congress on February 5, 1996: *"The truth of the matter is that Napocor officials know, and they have all the expertise to know, that without the dams that impede the free flow of water and silt down the steep inclines of the mountain river, the silt and sediment coming from the upstream will flow down with the river into the plains in the lowlands. This has been the case before the dams were built. The farmlands and communities along the Agno River have never been affected by silt or sediment since time immemorial even when storms and earthquakes occurred to aggravate soil erosion upstream. But after the Ambuklao and Binga dams were built, the dams blocked the free flow of water and silt. As silt flowed from upstream into the stagnant waters of the dam, the silt accumulated in the upstream portion of the dam. As*

silt deposits built up, it blocked oncoming silt that receded backwards upstream, swamping and inundating all farmlands and communities within reach."

Still, victims of siltation are not recognized by the NPC as among the affected people. NPC has stated: *"Regarding the siltation problem, please realize that it is caused by the natural occurrence of erosion along the Agno River that comes from upstream. The dam located downstream catches the accumulated silt and does not therefore cause the siltation."* The NPC has thus refused to pay the claims of 623 Ibaloy families for damages caused by the siltation of the dam on the grounds that *"damage could not be attributed to Ambuklao dam's existence."*³⁹

Siltation has not only caused more inundation and damages. It has also significantly shortened the lifespan of the two dams. Ambuklao and Binga dams were originally intended to last for at least 50 years. Today, because of heavy siltation, Ambuklao is no longer operating at full capacity. Only one of the three generators is operational with a capacity of less than 20 MW. Binga dam continues to operate at its full capacity of 100MW, but this is only possible because of expensive and limited dredging operations to rehabilitate the reservoir. The question of where to put the dredged silt also remains.⁴⁰

Considering the alarming siltation rate of the two dams, it is highly unlikely that they will last their full lifespan of 50 years. Having only a few years left to operate, it is expedient for the government to address the question of what to do with the dams afterwards since the problem of siltation is continuing and ever-increasing.

Comparing the siltation rates of Agno River to other areas, a recent study commissioned by the National Power Corporation entitled "Agno River Siltation Study" states that both Ambuklao and Binga dams *"have relatively high sediment yield rates when ranged against other sites worldwide."* Further, *"it is very clear...that the sediment yields and hence erosion rates for Ambuklao and Binga watersheds are much higher than those found in other Luzon damsites."* The study predicts that *"without long-term watershed erosion control and channel bank protection measures, the reservoirs will continually get reduced in capacity until siltation backs up to the tributary river channels...[causing] pronounced local channel siltations even at places much further from the reservoir."*⁴¹

For the proposed San Roque damsite, the volume of silt and sediment that will flow into the reservoir is even greater according to NPC's own estimates. This is because of the extensive erosion and the large volume of mine tailings coming from the mining companies in the dam's watershed area. Four mines have past and ongoing operations within the San Roque Dam watershed. These are the Sto. Tomas II Mine of Philex Mining Corporation, the gold mines of Benguet Corporation, the Itogon Mine of Itogon-Suyoc Mines, Inc. and the Sto. Nino Mine of Baguio Gold Mining Co. The first three of these mining companies dispose of their mine tailings into tailings dams built along the tributaries of the Agno River. The Sto. Nino did not bother to treat its mine tailings. Much of the tailings eventually end up in the Agno River basin in Pangasinan.⁴²

The problem of siltation is expected to be much worse for the proposed San Roque dam. This is one of the major reasons why the Ibaloy people of Itogon are opposing this third dam project along the Agno River.

3. Watershed Reservations

In 1969, Proclamation 548 declared 100 hectares around Binga Dam and 82,000 hectares around Ambuklao Dam as critical watershed reservations. A afforestation program was ordered to be carried out in the watershed area. Included in the afforestation program were the Benguet municipalities of Atok, Bokod, Buguias, Itogon, Kabayan, Kibungan, La Trinidad and Tublay. All of these municipalities, with the exception of Kibungan and Buguias, are territories of Ibaloy people. Also included in the proclamation were the municipalities of Hungduan and Kiangin in Ifugao Province and Kayapa in Nueva Vizcaya. The Proclamation restricted the practice of "kaingin" or swidden farming as well as the use of forest products within these areas.⁴³

In addition, the watershed area of the proposed San Roque dam covers 39,504 hectares in two Ibaloy municipalities of Itogon and Tuba in Benguet, and San Nicolas and San Manuel in Pangasinan. Only 5,000 hectares will officially be part of the Lower Agno - San Roque Watershed Reservation. However, government policies and programs on watershed management apply for the whole watershed area.⁴⁴

Presidential Decree 705 (P.D. 705) known as the Revised Forestry Code is the governing law on Philippine forests. Watershed areas are also covered by this law although specific "Watershed Reservation Regulations" were proposed in 1979 for the administration of "critical watersheds" by the National Power Corporation. A critical watershed is defined as that supporting hydroelectric dam structures.

P.D. 705 defines indigenous people living in forest areas as "primitive tribes ... living primitively." The decree provides for the conditional occupation by these forest dwellers of their ancestral lands. Section 53 states: "Kaingineros, squatters, cultural minorities and other occupants who entered forest lands before the effectivity of this Code, without permits or authority, shall not be prosecuted: Provided, that they do not increase their clearings; Provided further, that they undertake within two months from notice thereof, the activities which will be imposed upon them ... to conserve and protect forest resources." Any act resulting in the reduction of water yields, like the cutting of trees and clearing of swiddens "shall not be allowed." "Any person who shall cut, gather, collect or remove timber or other forest products from any forest land...without any authority under a license agreement, lease, license or permit, shall be guilty of qualified theft..."

On the other hand, the Watershed Reservation Regulations state that "no person shall be allowed to enter and/or occupy watershed reservations and make kaingin therein without the prior approval of the Ministry." All watershed occupants are also threatened with the closure of watershed reservations from "exploitation, occupancy or development" whenever the Minister deems it "in the public interest."⁴⁵

Today, many Ambuklao and Binga residents continue to live and farm in the dams' watershed areas. They live under the everpresent threat of being prosecuted as illegal occupants of critical watersheds.

Meanwhile, many other laws exist which may well be used to drive the Ibaloy people from their ancestral lands in the mountains and forests. Among these laws are the Public Land Act of 1905, Proclamation No. 217 (The Cordillera Forest Reserve, February 2, 1922), the Kaingin Law of 1939, Executive Order 180 (10 May 1956), Proclamation No. 120 (The Ambuklao Forest Reserve, November 25, 1966), Proclamation No. 548 (The Ambuklao-Binga Watershed, April 19, 1969), Presidential Decree No. 330 (August 1973), and Presidential Decree No. 1559 (June 8, 1978).⁴⁶

4. Some Benefits Derived from the Dams

The benefits of the Ambuklao and Binga dams were immediately felt particularly by the mining companies in Benguet Province since they were the first consumers of the electric power generated. The two dams' capacity of 175 MW of electricity directly supplied the American-owned mines in Benguet. Later, the dams were connected to the Luzon Grid in order to supply other consumers in the lowlands of Luzon.⁴⁷

On the part of the people, the benefits were slow in coming. It was only in 1979 that electricity reached the municipality of Bokod, where Ambuklao Dam is located, and 1980 for the adjacent municipality of Kabayan. Electricity was supplied to Barangay Tinongdan, where Binga Dam is located, only in 1993, while the adjacent barangay of Dalupirip was first electrified only in 1998. Until now, not all communities within these barangays are energized.

As of 1990, only 51% or 71 out of the 138 barangays of the province of Benguet were energized. The other 67 barangays were still in need of electrical service.⁴⁸ In terms of houses receiving electricity, only 42% of the total number of houses in Benguet had access to electricity in 1994.⁴⁹

According to Department of Energy (DOE) data, the industrial sector consumed the biggest amount of electricity in the whole country (12,559 GWh), followed by the residential sector (10,228 GWh), then the commercial sector (7,704 GWh) in 1997.⁵⁰

Aside from power supply, the NPC has cited other benefits derived from the dams. These benefits come in the form of a program for sharing the power generated with the host community. This is the program of the Department of Energy under Energy Regulation 1-94 which allots one centavo per kilowatt-hour generated sales of electricity to the host community. Each centavo collected is divided into three: 25% goes to missionary electrification of the host community, 25% goes to development livelihood projects and 50% goes to afforestation and watershed development projects. The amount is given through grants to the host barangay, town, province, region and resettlement area based on proposals submitted.

Another form of sharing is through the payment of National Wealth Tax to the host barangay, town or province.

The national wealth tax is equivalent to 1% of the annual gross revenue of the hydropower plant. This amount is divided among the host barangay (35%), municipality (45%) and province (20%). It is paid in cash by the NPC to the local government unit on a quarterly basis. Eighty percent (80%) of the National Wealth Tax is supposed to subsidize the power consumption of the host community (barangay, municipality and province). Whether this amount is really spent for its purpose is an issue which needs further investigation.⁵¹

VI. Impact of the Agno River Basin Development Program on the Ibaloy People

The construction of the Ambuklao and Binga dams along the Agno River has had serious impacts on the life and development of the Ibaloy people living in the Agno River Basin. With the proposed construction of the San Roque Dam, these impacts could be aggravated, to the extent of deciding the fate of the Ibaloy as a people.

1. Loss of ancestral homelands and land rights

Inundation, siltation and watershed area management of the Agno River Basin resulted in the loss of the ancestral homelands of around 300 Ibaloy families of Ambuklao and Binga. The productive ricefields, pasturelands, residential lands, racing grounds, gardens, burial grounds, forests and other properties inherited through many generations from their forebears are now lost forever. The descendants of these families have likewise been deprived of their right to the continued enjoyment of the land and its resources.

From a condition of private ownership of ricefields and residential lots, and open access areas where everyone in the community was free to share in the use of the land, these people have now been reduced to illegal occupants in the dam's critical watershed areas. From landowners by virtue of Ibaloy custom law or native title, to landless squatters in government-owned forest reserves.

With the construction of the Ambuklao dam, all land-title processing in the Agno River watershed was suspended. Nevertheless, improvements to public lands continued to be recognized by the state through the filing of tax declarations. However, the filing of tax declarations over land in the Agno River basin further weakened the control of the clan over their property by handing over to individuals the right to claim land.⁵² In addition, many of the displaced families were unable to buy other lands to live on, much less to till, having never been compensated properly for their losses.

In response to the complaints of non-payment of claims of the dislocated Ambuklao and Binga families, the government created the Ambuklao-Binga Damage Claims Committee (ABDCC). This committee was formed on June 18, 1996, forty years after Ambuklao dam was built. The purpose of this committee was not solely to address the complaints of the unpaid claimants but moreso to lay to rest the issue of "unfulfilled promises" which has hounded the NPC

in relation to the proposed San Roque dam. An amount of P25 million was supposed to have been made available to the committee for the payment of claims for land and property. Another P20 million was set aside for siltation claims.

As of August 31, 1997, there were 1,006 identified claimants who had applied for damage compensation with the committee. Of this number, only 84 claims have been paid for, 393 have been validated, while action still needs to be taken for the other 613 claims. Meanwhile, as of July 21, 1998, 580 claims for siltation damages were reported to have been validated and paid for by the committee.⁵³ Six hundred and twenty three (623) other claimants for siltation damages were denied payment on the grounds that "*the damages could not be attributed to the dam's existence.*"⁵⁴

In the areas to be affected by the San Roque dam, there is a list of 717 formal and informal land claimants in Dalupirip alone. The list includes actual occupants, ancestral land claimants and tax declaration holders. In Ampucao, there are eight families residing in Tayum, Daynet and Bominton, who are claiming ancestral land rights over these three communities to be submerged by the San Roque dam. The Aritao clan, which is the major group of land claimants in Tayum, reports a total membership of more than 400 individuals.⁵⁵

2. Loss of the resource base as a source of livelihood

Before the construction of the dams, the people's livelihood sources consisted of rice farming, swidden farming, goldpanning, fishing, hunting, animal-raising and fruit tree production in the fertile banks and valleys of the Agno River Basin. The rich natural resources of the river valley were enough to sustain generations of Ibaloy people in relative abundance. After the Ambuklao and Binga dams were built, much of these productive resources were either submerged, destroyed by silt or made inaccessible to the people by virtue of having been declared a watershed area. The displaced families have thus had to seek other sources of livelihood elsewhere.

For the barangays of Itogon upstream of the proposed San Roque dam, the resource users include not only the residents of these barangays but also others coming from as far as Pangasinan who seasonally access the resources through gold panning, pasturing of cattle, fishing and hunting.⁵⁶ The people have expressed concern that their future generations will be deprived of this resource base as a means of livelihood.

3. Dissolution of Ibaloy communities and weakening of traditional values

Several Ibaloy settlements were lost under the waters and silt of the Ambuklao and Binga dams. Some of these were the settlements Liboong, Bantey, Bangao, Balacbac, Lebcow, Binga, Ambuklao, Pidyaga. The people who used to live in these communities were scattered on the higher levels of the mountainsides and fringes of the reservoir. Thus sprouted the new high-crest sitios founded by the displaced families

in the 1950s and 1960s. Among these new settlements are sitios Bagajao, Bonecow, Guissit and Binga Riverside.⁵⁷

Since no prior notice was given to the people that the rising waters would come, the people were unprepared to relocate. Others were unable to save their properties because of the lack of transportation money. Their land, houses and much of their belongings were flooded. The people were unable to relocate the remains of their ancestors who were buried in the Ibaloy custom beside or under their houses. The people believe that the spirits of their ancestors were disturbed by the construction of the dams. To this disturbance, they attribute the tragedies and accidents being experienced along the river in Ambuklao and Binga.⁵⁸

Many of the people to be affected in Dalupirip have expressed apprehension at the expected loss of community solidarity and traditional values once the San Roque dam will be built. They do not expect to find the same spirit of cooperation and peaceful harmony in other places where they are forced to resettle. They fear that their traditional values and cultural practices will disappear causing disunity among them as Ibaloy people.

The disturbance of the burial grounds of their ancestors is an expressed fear. As one elder said, "It is not easy to destroy our sacred burial grounds. It is our community faith that our beloved dead, most especially our ancestors, are resting in peace in our ancestral land. We believe they are with us in their spirit as we are with them in our traditional and cultural values. That is why no amount of money will constitute a just price for their sacred graves. Our beloved dead are now in their symbolic sacred world that even we have no right to disturb. One more thing, it is given nature that we are at peace in our ancestral land. We are like one family. We are like brothers and sisters in this community. We care for and help each other. We share what we have to those who are in need. That is why we do not suffer much from lack of food and other basic needs for we support and care for each other. Despite the hardship that we face in life, we are still happy, satisfied and at peace in our ancestral land."⁵⁹

Among the significant cultural practices unique to the Ibaloy are the *peshet* or the prestige feast performed by the baknang and the *dongba*, or traditional horse racing festivities widely participated in by the different Ibaloy communities. These two cultural practices are referred to by Dr. Eufronio Pungayan PhD., an Ibaloy linguist and historian from Binga, as the "two uniting factors among the Ibaloy". The *peshet* and the *dongba* are special occasions for the Ibaloy people to gather and strengthen solidarity among communities and clans.

According to Pungayan, in the 1950s after World War II, the Ibaloy people were recuperating from the effects of the war. They particularly had to recover from the loss of their properties and the depletion of their cattle herds necessary for the performance of the *peshet*. In the areas where the dams were built, the people were unable to recuperate. The loss of pasturelands submerged by the dam contributed to the continued decline of cattle herds already depleted by disease, cattle rustling, sale, consumption, urbanization and the shift to wet-rice agriculture. The *baknang* families in the Agno river

basin lost their capacity to continue the prestige feasts expected of the *baknang*. In recent times, the *peshet* is rarely held, and never in the same scale as that performed by the early *baknang*. The last *peshet* was that performed by the former vice-mayor of Bokod, Jose Solano in 1998.

The *dongba* has likewise declined, particularly since 1954 up to the present. Racing grounds used for the *dongba* such as the Lebcow-Binga racing ground were submerged by the Ambuklao and Binga dams making it impossible for the traditional horse races to continue in these areas. At present, the *dongba* culture of the Ibaloy has been reduced to a local practice limited to the Ibaloy of Daclan, Tinongdan, Dalupirip and La Trinidad. The two most recent *dongba* were held at the Daclan horse racing grounds in 1988.⁶⁰

In terms of language, there has also been a steady decline in the use of Nabaloi by Ibaloy descendants in some areas. Those families who moved to Palawan and Nueva Vizcaya have children speaking the host areas' languages. Children of Ibaloy families living in Baguio and in the mining communities and town centers of Benguet mostly speak Ilocano while those living near the dams speak Tagalog. This reflects the steady decline in the practice of traditional customs and values particularly among the displaced Ibaloy families.⁶¹

VII. Summary and Conclusion

During the construction of the Ambuklao and Binga dams in the 1950s, some 300 Ibaloy households were forced to give up their homes and ancestral lands to make way for these two dams along the Agno River. As an afterthought, they were promised monetary compensation for their loss, as well as relocation in areas which were supposed to be agriculturally fertile. They never received the compensation and most relocation sites assigned to them proved to be inhospitable or previously occupied. Many of them returned to seek new homes with kindred in other parts of Bokod, Itogon and Baguio.

The experience was, to say the least, traumatic. Thus, in the 1970's, when the state asked hundreds of other Ibaloy families to make way for the construction of a third and bigger dam along the Agno River at Tabu, Dalupirip, the people simply refused. Their refusal was bolstered by the fact that Dalupirip is one of the few remaining Ibaloy communities unmarried by dams, mines or other projects.

The state eventually cancelled its plans for the construction of the Tabu dam. But it is now pushing through with the construction of another dam, the San Roque Multipurpose Dam, just a few kilometers downstream, within the municipality of San Manuel in the province of Pangasinan.

The San Roque dam's reservoir will extend into Dalupirip and Ampucao. The build up of silt, particularly from the mining sites of Itogon, will cause the area of inundation to gradually extend farther upstream, until it reaches Itogon Poblacion and Tinongdan. Hectare upon hectare of the communities' ricefields, gold panning sites, pasturelands, swidden farms, burial grounds and homelots will be de-

stroyed. These Ibaloy communities are thus resisting the implementation of the San Roque dam project which will eventually wipe them out of the Agno river basin.

The Ibaloy have already sacrificed so much for the national interest. Aside from the dams, they have given up their land and resources for the mining companies in Itogon, for logging operations, for the building of Baguio City out of the old Ibaloy rancheria of Kafagway, for the Export Processing Zone, for the Marcos Park in Taloy, for watershed reservations, for golf courses and for many other development projects in the name of the "national interest." The sentiments of the Ibaloy people in relation to this were expressed by Congressman Ronald Cosalan in his privilege speech delivered in Congress on February 5, 1996 opposing the construction of the San Roque Dam:

"All these deprivations, the Ibaloy have suffered in the name of national welfare. Enough! The Ibaloy now cry! They have sacrificed enough and so much for their countrymen and for national welfare. Now, it is their turn to ask their government, this administration, to look into and consider also their interest and welfare. They plead in apprehensive anguish that they be spared their little ancestral corner that is their only place left under the sun. In a televised interview of one of the women barrio folks in Dalupirip, Itogon, she articulated how her people will feel if they were to be driven off their ancestral abode to give way to the San Roque Dam. She emotionally said and obviously meant every word of it: "We might as well die."

Flawed Planning of the Dams

The planning and implementation of the three dams along the Agno River exhibit serious flaws which should be noted by the World Commission on Dams.

One: there was a clear failure on the part of the Philippine government and the dam builders to respect the rights of the Ibaloy people to their ancestral land and resources. The government's own constitutional provisions and other laws, as well as international conventions on indigenous people were violated.

Two: for the Ambuklao and Binga dams, there was an absence of any provisions for compensation, resettlement and reparation during the planning and construction phase of the dams. Compensation and resettlement were only offered after the dams were built and after the Ibaloy people had already been displaced from their homelands. For the San Roque dam, a Resettlement Action Plan (RAP) has been drawn up for the identified 680 affected families in Pangasinan and 61 families in Itogon. However, the RAP does not recognize the other communities to be affected beyond the tail end of the reservoir. Consequently, no provisions for land, resettlement or alternative livelihood are being made available for those residing upstream who will

eventually be displaced by siltation and who also presently utilize the resources along the Agno River.

Three: the government refuses to recognize the problem of accumulating silt as a consequence of the construction of the dams. Siltation is a serious problem because of the presence of the mines, vegetable gardens, and other erosion-prone areas in the watershed of the dams. This problem should have been considered in the planning of the dam projects, especially since Benguet is located in an earthquake zone.

Fourth: dam planners made no projections nor provisions for the cultural repercussions of the dam projects on the Ibaloy people. The weakening of indigenous Ibaloy cultural and social institutions is an irreplaceable loss to the people.

Recommendations

We now forward the following recommendations for consideration by the World Commission on Dams:

1. The rights of indigenous peoples to ancestral land and self-determination should be respected in any dam project being considered for construction on indigenous peoples' land.
2. Because of the many negative impacts of megadam projects, alternative energy sources, technologies, and approaches, should first be considered before the decision is made to build a megadam. For example, micro-dams and mini-dams offer many advantages - as well as avoid the disadvantages inherent in large hydropower dams - in terms of impact on communities and ecosystems, technical design concerns, construction costs, finance risks, and community role in operation and management. Such small-scale dams are better suited to rural electrification even as they can still contribute significantly to the national power grid.
3. The whole process of national energy planning should be subjected to closer public scrutiny, with full participation by the communities especially those directly affected by such energy projects. For the Ibaloy people, the whole concept and design of the San Roque Dam must be subjected to a thorough and transparent review in the broad context of its socio-economic and environmental impact. The process must include full democratic consultations with all affected communities, with strict observance of the principle and procedures of "free and prior informed consent" especially in consulting indigenous communities.
4. In the meantime, pressure should be exerted on the San Roque Power Corporation and the Philippine government to suspend all San Roque Dam related construction work.

The proper government regulatory agencies should recall the permits, certifications, and other issuances that have enabled the SRPC to continue construction work. Foreign banks should also be enjoined to stop funding the SRDP.

5. Proper reparations should be given to the Ibaloy people who sacrificed for the Ambuklao and Binga dams. All claims for compensation of land and properties damaged by inundation, siltation and watershed management should be paid immediately. Alternative lands for residences and agriculture comparable to what they had lost should be offered to the displaced families.

6. Dam builders should take into consideration the overall impact on affected groups of indigenous peoples, especially those previously disadvantaged by earlier development projects. For the Ibaloy, the aggregate effect on the mines, logging, dams, parks, export processing zones and urbanization has been the impoverishment of the people and a general weakening of their indigenous life.

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CHILE



THE PEWENCHE PEOPLE AND HYDROELECTRIC DEVELOPMENT

by *Aldisson Anguita*

Inter-regional Mapuche Council

Introduction

In the deepest part of the Ocean there lived a great snake named Kai Kai.

Kai Kai ruled all the waters.

One day Kai Kai ordered the Ocean to flood the Earth.

There was another snake as powerful as Kai Kai living high in the mountains.

This Xen Xen snake then advised the Mapuche people to climb to the mountains when the waters began to cover the earth.

Many Mapuche people could not climb and they died and they became fish.

The waters were rising and rising,

And the mountain was floating and also was rising and rising;

The Mapuche people put small gourds onto their heads to protect themselves from the rain;

And they repeated "Kai Kai" asking for the two snakes to fight each other.

And they answered: Xen Xen, Xen Xen.

The Mapuche people made prayers and the waters became quiet and calm,

The people that survived came down from the mountains and they populated the Earth.

This is how the Mapuche people were born.

The Mapuche people is one of the first nations living in South America in the south-central territory of what now are the Republics of Chile and Argentina. When the Spaniards reached the Mapuche territory (in 1541) there were about one million people living there.

With the arrival of the Europeans one of the bloodiest wars began which lasted for 300 years. It was a time of great military exploits and heroic acts by the brave warriors who gave their lives defending independence and freedom.

As the Spanish Army could not defeat the Mapuche people with violence and war, they were obliged to sign a peace treaty on the 6 January 1641 (Treaty of Quillín), acknowledging the frontier at the Bio-Bio River (8th Dept. of Chile) in the North and the Tolten (9th Dept. of Chile) in the South. That territory then became an independent nation, comprising the Mapuche Huilliche (People of the South), Mapuche Lafquénche (People of the Coast), Mapuche Picunche (People of the North), and Mapuche Pewenche (People of the Pewenche).

After peace came, there were still other conflicts, especially with the Spaniards who wanted people to work as slaves mostly in the North where illness had significantly diminished the native population from the Picunche region (People of the North, in the Mapuche language).

With the coming of Chilean independence and the founding of the new Republic, pressures mounted to occupy

the independent territory of the Mapuche Nation. There was one long debate after another, all with the same idea, until in 1868 a total war began against the native people. The invasion of the Mapuche Territory was financed by the Chilean Army. Many people died, terror reigned, houses were burned, women were kidnapped, children were killed and the men were made into slaves or faced death. This massacre was named "Peace campaign of the Araucanía" (Pacificación de la Araucanía). At the same time in Argentina, there was a "campaign of the desert" («campana del desierto»), with similar objectives.

After the military defeat of the Mapuche people by the Chilean Army, the Mapuche people began a struggle for survival. Their communities were relocated by force and concentrated in "reducciones" (indigenous reserves) with poor lands and reducing their territory so that life became very difficult. Their lands were constantly expropriated and the administration of the Chilean State was dedicated to regulating land tenure so that legal mechanisms were left open to allow the big landowners to get hold of all the Mapuche lands as soon as possible. Even so the Mapuche people did manage to survive.

During all of the 19th and the first half of the 20th centuries the territories of the Mapuche people were drastically reduced causing them to become an extremely poor and marginalised people. The visits of the Lonko (chiefs of the Mapuche communities) to the Chilean authorities were of no use. In the following years, after so many laws had been promulgated mostly against the Mapuche people, many had to migrate to the cities to work as servants, living in the shanties around the big cities.

According to the Census of 1992, there are about 1,5 million Mapuche individuals living in Chile, distributed in the rural regions and the big cities. In Santiago, the capital of Chile, there are about 500,000 Mapuche individuals, and in total, the Mapuche population is about 11% of the 13 million Chilean inhabitants.

In 1993, law 19253 was promulgated, the Special Act on Indigenous People, as a follow up to a commitment made by the Presidential candidate of the first democratic Chilean Government after a long military dictatorship. Under this law the State has committed itself to the protection and development of indigenous people, acknowledging the existence of indigenous people inside the nation and creating a series of legal articles about education, culture, lands and establishment of the National Corporation for Indigenous Development (CONADI), a State institution in charge of relations between the Government and indigenous people.

The Mapuche People and the Environment

The commercial expansion of Chile and free market policies are generating a very heavy pressure on the natural resources that abound in the Mapuche Territory. Forestry operations subject to few regulations have generated many conflicts over land, as for example with the communities of

the Puren, Lumaco, Traiguén, Tirúa (9^o Dept. of Chile), Cuyinco (8^o Dept.), regions and others. In these cases the communities are reclaiming their ancestral property which they lost due to the successive land thefts facilitated by Chilean laws and all the arbitrariness that occurred during the military dictatorship. As a result there are now conflicts with big enterprises that are trying to impose their power over the legitimate owners of the lands. Confrontations between the members of the communities and the Police have resulted. In Lumaco, in December 1997, the "democratic" Government of Chile invoked the Internal Security Act that was promulgated during the military regime and which enables the security institutions to enter houses and to jail and interrogate any suspected. The communities affected were Pichi-Lincoyan and Pilil-Mapu, and 12 people were arrested and put in jail. The families were denied information about the detainees, generating confusion, fear and desperation. The decision of the communities to get back their lands has created a very severe situation as the authorities have reacted much too late to an upcoming conflict that could be seen coming for a long time.

Hydro-electric Enterprises and The Mapuche-Pewenche People

The Bio-Bio river is one of the main rivers of Chile, located in the central zone (8^o Dept.). From its source near the Lonquimay volcano, the river and its catchment area are a shrine for the lives of hundreds of species of plants and animals and of inestimable value to science and a zone of high biodiversity, as recognised by the whole national and international scientific community.

However, due to the high volume and constant flow of the river throughout the year and its passage through places with a rugged and mountainous geography, it is of great interest to hydroelectric enterprises for developing energy generating projects. The national electricity company (Empresa Nacional de Electricidad, S.A. - ENDESA) that was created by the Chilean State and privatised during the military regime, has decided to build a series of six hydroelectric installations. These are Central Quitrman, Huequecura, Aguas Blancas, Pangué (now generating energy), Ralco and Ralquil. This project by ENDESA has provoked many reactions inside and outside Chile but ENDESA has not yet recognised these concerns.

The Pangué energy plant began operations in 1997. Authorisation for its construction was granted before the Indigenous and Environmental Acts came into force, on the grounds of national interest due to the growth of the country and the growing demand of energy. Only the idea of making one installation was revealed and it was argued that the environmental and social impacts would be minimal. The Executive national power gave all its support and the works were inaugurated by the President of the Republic, don Eduardo Frei Ruiz-Tagle. This project caused the relocation of 50 Mapuche-Pewenche individuals and flooded 500 ha (about 1500 acres).

After the Pangué project, ENDESA revealed plans to build a second energy plant upstream of Pangué. This is the Ralco energy plant that will inundate about 3500 ha that are mostly inside Mapuche-Pewenche lands, with the forced relocation of one hundred families amounting to 500 individuals. A fundamental difference today is that there are Indigenous and Environmental Acts in force. Due to this ENDESA has been obliged to make many studies of environmental impacts by order of the National Environment Commission (CONAMA). In 1996 all the public bodies and all the indigenous communities, which were asked for their opinion, unanimously rejected the adhoc mitigation reports and the environmental impact evaluation studies of ENDESA. As a result an Addendum was developed aimed at improving the environmental and social plans. After that, and under heavy pressure from the government, CONAMA gave its permission for the Ralco project to be built. A great public controversy resulted in the dismissal of the director of CONAMA.

The relocation plan, however, is still pending approval by CONADI and has caused serious conflicts with the government, which has sought the dismissal of two of the directors of CONADI for their public opposition to the Ralco project. It is evident that the pressures are almost untenable for the governmental bodies. On the other hand, ENDESA has invested a lot of money in an advertising campaign, trying to convince the Pewenche families to give their approval to the project and to accept the proposed relocation. Due to this the families have been divided, provoking a break in the livelihood and in community relations, that were intact until the arrival of ENDESA in the area.

The Pewen Foundation was created to mitigate the impact of the project on the communities, but the Foundation has lost credibility as it has been created not in response to the needs of the indigenous people but more as a vehicle through which ENDESA can relate to them. The future of the Foundation is in doubt

Opinion of the Pewenche Community about the Ralco Hydroelectric Project

Generally speaking, the concepts used by technicians and politicians are incomprehensible to members of the indigenous communities, so that there is now a great problem of communication between the people inside and outside the communities. The traumatic situation of receiving and processing information from the staff of ENDESA at the site, the governmental bodies and the NGOs have generated a climate of confusion and it is evident that the division of the people in the communities is due to this. The Pangué case is alluded to constantly because ENDESA did not respect its promises. The promised creation of jobs was only a reality while there was a need for an unqualified workforce and after that the enterprises used their own staff, so there were no jobs at all for the indigenous people. There is also the fact that ENDESA is working without approval from

CONADI and is cutting trees without respecting the regulations of CONAF (National Forest Corporation) and that here there is a discrimination because this institution is very strict with the Pewenche people.

The people are constantly insisting that they should be allowed to decide whether to relocate and abandon their lands. In general they are indignant because ENDESA continues working without consulting anybody, a forced relocation would create many problems and the Pewenche culture would suffer a lot. They are also not prepared to let their cemeteries and graves be flooded. In the Ralco Lepoy community the general view is that the proposed relocation to the area named "El Barco" that is situated towards the mountains is not acceptable because it is not possible to live in that place during the winter. The place is habitable during only three or four months each year. If it had been habitable the indigenous peoples would have occupied it one or two centuries ago. Moreover the project is not seen as exclusively a problem of the Quepuca Ralco and Ralco Lepoy communities that are living in the zone of the project but as a threat to the whole of the upper Alto Bio-Bio River.

As well as the evident disinformation there is also a language barrier that makes the communication impossible between the Pewenche and the national society. This fact has not yet been taken into account while looking for a better method of communication with the affected indigenous people.

Role of the Governmental Bodies in the Zone

Since the creation of the Republic of Chile, legislation on indigenous peoples has been mostly concerned with land. The creation of the "*reducciones*" (indigenous reserves) was the first phase of the colonization that generated extreme poverty among the Mapuche people and specifically among the Mapuche Pewenche people. Even so the communities were safe as they occupied lands without agricultural value and with very difficult access. We can say that the Chilean State generated poverty and marginality. Now the added value of the Pewenche territory due to the existence of voluminous watercourses has been recognised. It is now argued that the development of these rivers must be undertaken and the relocation of the families to places situated even further away is proposed. This again generates marginality as a result of further unequal development.

The public services that are responsible for providing public welfare and assistance to all the Chilean people do not have enough programmes in that area. There are no health programmes, nor housing, education, infrastructure and road rehabilitation schemes, nor social welfare and work opportunities. The civil servants of the public services have only visited the area because of the recent conflict and not due to an initiative showing a real concern for the welfare of the Pewenche families and individuals.

The Construction of Hydroelectric Plants and the Relocation of People International Aspects

The relocation of persons, communities and settlements to make way for different kinds of mega-projects of development is regulated by diverse instruments and international bodies because of the human rights and the environmental implications.

Convention 169 of the International Labour Organisation (I.L.O.), approved in 1989, includes a norm to discourage the relocation of indigenous people and clarify their rights when these relocations occur (art. 16). Explicitly, it indicates that when indigenous people have to relocate it must be with their free approval and full knowledge; if not, it must be done after a public hearing at which the people can be effectively represented. Whenever possible, these people will have the right to return to their traditional lands as soon as the causes that motivate their relocation have disappeared.

When it is not possible to return, as determined by agreement, or if there is no such agreement, by appropriate procedures, those people will have to receive in any case lands which must have at least the same quality and legal status as those lands they occupied before, and that can permit those people to attain their necessities and guarantee their future development. When the affected

peoples prefer to receive compensation in money or in kind, that compensation will have to be assigned to them with the necessary guarantees.

The people that are relocated should be compensated for any loss or damage they have suffered as a consequence of their relocation. But this Convention has not been ratified by the Chilean State. In recent days and due to the controversy about the Mapuche question in general, a group of members of Parliament have tabled a motion for the ratification of the ILO Convention 169. This initiative has been opposed by some senators and especially by those retired commanders from the military forces that occupy seats as senators.

Agenda 21

This legal instrument passed by many States at the Earth Summit of Rio de Janeiro in 1992 created a special Chapter dedicated to indigenous people. Chapter 26 includes a series of dispositions about the protection of indigenous lands and territories and the right of the peoples to participate in the decisions adopted about those lands and territories.

26.3. a.

I "Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the



Mapuche community during the celebration of Ngillatun. Photo: Helmut Shindler

indigenous people concerned consider to be socially and culturally inappropriate.”

III “Recognition of their values, traditional knowledge and resource management practices with a view to promoting environmentally sound and sustainable development.”

IV “Recognition that traditional and direct dependence on renewable resources and ecosystems, including sustainable harvesting, continues to be essential to the cultural, economic and physical well-being of indigenous people and their communities.”

26.4.

“Some indigenous people and their communities may require, in accordance with national legislation, greater control over their lands, self-management of their resources, participation in development decisions affecting them, including, where appropriate, participation in the establishment or management of protected areas.”

26.6.

“Governments, in full partnership with indigenous people and their communities should, where appropriate:

a) Develop or strengthen national arrangements to consult with indigenous people and their communities with a view to reflecting their needs and incorporating their values and traditional and other knowledge and practices in national policies and programmes in the field of natural resource management and conservation and other development programmes affecting them.”

The Chilean State is one of the signatories of Agenda 21.

Indigenous Rights and International Bodies

The concerns of indigenous peoples are now being discussed by international bodies that promulgate law. In the United Nations Human Rights Commission there is a Working Group on Indigenous Populations that has the task of discussing the text of the Draft Declaration on the Rights of Indigenous Peoples; this Group meets every year to refine details and discuss concepts in the text. At the same time the UN is holding meetings on this issue in the frame work of its “Decade on Indigenous Peoples”.

At the Interamerican level there is also a text about the Interamerican Declaration on the Rights of Indigenous Peoples, prepared by the Organisation of the American States with respect to relocation. In its article XVIII N° 6, it says: “The States could reallocate or reassignate indigenous peoples but in exceptional cases, and then with the genuine and informed free approval of those peoples, and with full compensation and the immediate substitution for appropriate lands of equal or better quality, and the same legal status, and guaranteeing the right to

return if the causes that originated the relocation would cease to exist.”

The World Bank

Operational guidelines

4.20. Indigenous Peoples

Point 6. An objective of the Bank “is to ensure that the development process fosters full respect for their dignity, human rights and cultural uniqueness” and “to ensure that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits”.

Point 8. “The strategy for addressing the issues pertaining to indigenous peoples must be based on the *informed participation* of the indigenous peoples themselves”.

Guidelines about forced relocation

4.30. Involuntary Resettlement

Point 2. “Development projects that displace people involuntarily generally give rise to severe economic, social and environmental problems: production systems are dismantled; productive assets and income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community structures and social networks are weakened; kin groups are dispersed; and the cultural identity, the traditional authority, and the potential for mutual help are diminished. Involuntary resettlement may cause severe long-term hardship, impoverishment and environmental damage unless appropriate measures are carefully planned and carried out.”


Point 3(a) “Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs.”

In general these are some of the aspects that the World Bank expose about the development of projects that imply or affect indigenous peoples and that the resources for those projects are endorsed by the World Bank.

Notes

¹ Extract from “Historia del Pueblo Mapuche” [History of the Mapuche People] by José Bengoa.

² The ‘pewen’ (arancaria pine) is a tree characteristic of the Cordillera of the southern Andes. The pine nut is the staple of the Mapuche Pewenche.

³ For details of the conflict see: <http://members.aol.com/MAPULINK/> (comunidades en Conflicto). 



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CANADA



LAKE WINNIPEG REGULATION CHURCHILL-NELSON RIVER DIVERSION PROJECT AND THE CREES OF NORTHERN MANITOBA

by Luke M. A. Hertlein

Member of Protecting Aboriginal Rights,
Lands and the Environment (PARLE)

Overview of Hydroelectric Development and Canadian Aboriginal Peoples

The effects and impacts of the Lake Winnipeg/Churchill-Nelson River Diversion Project on the local Aboriginal communities has striking similarities with the effects of past hydro-power developments on Aboriginal peoples in Canada. While every Aboriginal group is unique, the governmental approach to Aboriginal peoples and hydro development is somewhat similar across the country, whether the impacted Aboriginal peoples are parties to a treaty, negotiate a treaty or negotiate an agreement to deal with the effects of a hydro project.

Looking at Labrador in Eastern Canada, a hydro development in 1976 severely affected the Innu of Nitassin. At that time, the first two generating units at the Churchill Falls powerhouse flooded vast areas of land in the upper portion of the Churchill River watershed. This project involved the construction of one of the world's largest underground powerhouses and the 5 698 square kilometer Smallwood reservoir. The construction of Churchill Falls resulted in the flooding of Nitassin, the Innu's traditional

territory. The Innu were not consulted or warned before construction and flooding. The flooding led to the loss of hunting territory, travel routes, canoes, other property, and Innu burial sites. The flooding also led to an increase in methyl mercury levels in the fish. Compensation has not been offered for the losses suffered by the Innu. Recent announcements have been made for further development of Churchill Falls. The Innu have responded to this ongoing activity by rallying support for their demands which include that consultation with the Innu must occur on any further development in Nitassin.²

In the neighboring province of Quebec, the most famous Canadian hydroelectric development to impact Indigenous peoples involves the James Bay Cree. In the early 1970's, work had begun on traditional James Bay Cree territory. In 1972 the James Bay Cree decided to pursue an injunction in Quebec Superior Court to halt the work on that project until the Cree and Inuit rights in the territory had been dealt with. They won that injunction on November 15, 1973 and four days later the Quebec government announced its willingness to negotiate. But three days after that, the injunction halting the work was set aside by the Quebec Appeal Court. Negotiations with

the government began in 1974 while the construction proceeded. Construction included a major highway, an airfield, and a town site to house workers. For the James Bay Cree, the ensuing negotiations were conducted under duress and were highly inequitable. In 1975, the modern day treaty *James Bay and Northern Quebec Agreement* was signed on behalf of all James Bay Cree². Over the years, the James Bay Cree have documented the impacts of the hydro project in various fora, continuing to use provincial, federal and international arenas to encourage the parties of the treaty to follow through with their obligations.

Ontario, considered the industrial heartland of Canada, has concentrated mainly on nuclear power for its energy needs. Despite nuclear power, Ontario has its share of hydro projects that have impacted Indigenous peoples. In the 1920s, hydro projects within the Nelson River basin were completed on Lac Seul, including a diversion of the Ogoki River. This resulted in the flooding of graveyards for the Lac Seul Indian Band. In 1958 with the development of the White Dog Falls Dam on the Winnipeg River and the Caribou Falls Dam on the English River, Aboriginal peoples had to be relocated. The Aboriginal people living in the area also suffered loss of fur production and faced water fluctuations that ruined traditional foods, burial grounds and sacred land sites in addition to healing medicines and wild rice fields³.

In Manitoba, the 1977 Lake Winnipeg Regulation Churchill-Nelson River Diversion Project was not the first to impact Aboriginal peoples living in that province. The 1960 completion of the Kelsey generating station was to serve the community of Thompson and the nickel mine. Kelsey caused wide-scale flooding of the Nelson River and Sipiwesik Lake, adversely affecting the Cree's traditional resource areas. In the mid-1960's construction began on the Kettle generating station further downstream within the Split Lake Cree's traditional use area.⁴ The Kelsey and Kettle generating stations, developed along the Nelson River, became pre-existing dams for later development of the Lake Winnipeg/Churchill-Nelson River Diversion Project. The impacts involved the Crees living at Split Lake and Cross Lake. The 1964 construction of the Cedar Lake forebay and the construction of the Grand Rapids dam resulted in impacts on the Cree of Grand Rapids, Moose Lake, Chemawawin and The Pas. At the time there was virtually no political opposition offered due to the isolation of these communities, and they were very much left unaware as to the full extent to which they were going to be impacted, which included flooding and relocation of the Chemawawin Indian Band.⁵

Just west of Manitoba, the province of Saskatchewan has also developed hydro projects with the Nelson River drainage basin that continues to affect Aboriginal peoples. In 1942, with the completion of the Whitesands Dam, the lives in native communities such as Southend were

disrupted. Primarily built to provide more regulated water flow to the Island Falls Dams, Whitesands Dam resulted in a one and half metre increase of Reindeer Lake. The commercial and domestic production of fish and fur and transportation around Reindeer Lake were all impacted. 1964 saw the creation of the Squaw Rapids Dam on the Saskatchewan River. The Native community of Cumberland House was negatively impacted by downstream fluctuations in the water level of the various rivers, streams and channels in the Cumberland Delta region. Despite no resistance during the dam construction, extensive political and legal action ensued, in pursuit of mitigation efforts and compensation.⁶

In the province of Alberta, construction of the Bighorn Dam in the early 1970s affected the graveyard sites of the Stoney Indian Band and flooded other sacred places. The Stoney Indian Band was further impacted by three dams that were constructed on the Stoney Reserve, resulting in some contention over clauses of a signed agreement.

In the most westerly province of British Columbia, the 1956 Kemano I Dam impacted the Haisla Band, Cheslatta Indian Band and the Carrier-Sekani Tribal Council. Designed to provide power to ALCAN's mining and smelting operations, the diversion project affected one river and created an 890 square kilometre reservoir. The results of this project include widespread environmental damage and human dislocation, with the Haisla receiving a one time payment of \$50,000 based on the advice of the federal Department of Indian and Northern Affairs. This resulted in these three groups making a specific claim to the federal government. The W.A.C. Bennett Dam, completed in 1968, created Williston Lake, a 1 600 square kilometre artificial lake. Lawsuits resulted, with a specific claim against the federal government. Recently, the federal Indian Claim Commission found in favour for the Cree Indian Band of Fort Chipewyan. It held that no interpretation of treaty could justify such a massive infringement on the treaty rights of a First Nation or justify the destruction of its economic livelihood. The Indian Claims Commission found that the dam's impact substantially interfered with the exercise of the First Nation's treaty rights and entitlements, and that those rights were never extinguished, since such existing rights are protected by the Constitution of Canada.⁷

The Cree of Northern Manitoba⁸

Like most other Indigenous peoples, the customs, traditions, traditional knowledge, worldview and spiritual life of the Cree of northern Manitoba are all based on the environment. Rivers, lakes, trees, forests and the animals, birds and fish all play an important role in life. The identity of the Cree is based on their relationship with the Creator

and all things around them. Therefore, because of their reliance on nature and the environment, any discussion about social impacts related to the construction and operation of dams cannot be separated from the environmental impacts created by such projects. In addition, consideration must be made of the unique historical and legal context concerning their relationship with the Crown. As signatories to a treaty with the Queen of England, their treaty is a sacred treaty, directly confirming their inherent right to live their traditional way of life. The sacredness of the treaty means it is impossible to extricate treaty and Aboriginal rights from any examination of social impacts arising from hydro development.

From time immemorial, long before the colonizers of Europe "discovered" North America, the Cree people lived in and around the area of what is now known as Lake Winnipeg, Churchill River and the Nelson River in the province of Manitoba. Living in and around the boreal forest, the Crees in Northern Manitoba are referred to as Swampy Cree because the land they live on is mostly muskeg. At the time of European contact, the Cree had pre-existing political structures and economies, following seasonal hunting, fishing, trapping and gathering cycles in the area. Like other Aboriginal peoples in Canada, they lived in "organized societies, occupying the land as their forefathers had done for centuries."⁹ The importance of the relationship to the land and the spiritual connection to the Creator, and all things in life, were constantly reinforced. From generation to generation, the Crees pursued their traditional ways of life, recording it through oral tradition in the form of myths, legends, stories and accounts. The high importance of the oral tradition remains the central way in which education, communication of culture and socialization takes place. Despite their histories, the Cree in northern Manitoba repeatedly faced the imposition of European values and law on their lands and way of life.

First contact between the Cree of northern Manitoba and western society took place during the fur trade in the seventeenth century.¹⁰ For the purposes of pursuit of the fur trade, in 1670 the King of England "granted" the Hudson's Bay Company ownership of all land that drains into Hudson's Bay. The territory covered by the grant included all of present day Manitoba. This land was granted under the assumption that the King had the ability to impose such a European concept on the Aboriginal people, and was done without negotiation or consultation with the Cree. Subsequently, the Cree traditional lands in and around Lake Winnipeg and the Nelson River became very important fur trade routes. Trading posts such as Norway House, Cross Lake, Split Lake, York Factory and Nelson House were built, and Crees started to settle in and around these posts. During this time, positive and negative developments occurred in the relationship between the Cree and the fur traders. While the fur trade could be seen

as a time of cooperation, recognition and mutual benefit,¹¹ it came along with its disadvantages. Questionable trade practices toward the Cree, the introduction of fatal diseases and the introduction of alcohol were some of the less beneficial aspects of this era.

An important legal development for the Cree and all Aboriginal peoples in Canada occurred with the recognition of the rights of Aboriginal peoples in the *Royal Proclamation of 1763*. Again, European values were thrust upon the Aboriginal peoples. The *Royal Proclamation* was without any input or recognition of the Aboriginal peoples and their existing laws. Based on the European concept of *terra nullius*, the *Royal Proclamation* was based in the European idea that the land was virtually empty, ready for discovery and settlement. While the European based *Royal Proclamation* treated the land as virtually empty, it did recognize the Aboriginal peoples living on the land. Consequently, as part of the Constitution of Canada, it is an early written source of the recognition of the inherent rights of Aboriginal peoples including Aboriginal title and land rights. The *Royal Proclamation* states: "And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds..."¹² Canadian constitutional development led to the federal government obtaining exclusive jurisdiction over lands and lands reserved for Indians, and led to the 1982 (s. 35) recognition and affirmation of Aboriginal and treaty rights.

In 1875, with subsequent adhesions in 1908 and 1910, the rights and lands of the Cree of northern Manitoba were subsequently guaranteed in 1875 by way of *The Lake Winnipeg Treaty, Treaty Number Five (Treaty 5)*.¹³ After Manitoba became a Province in 1870, many Aboriginal leaders felt the increasing pressures of settlement and the loss of wild game. Treaty 5, like the other numbered treaties, was conducted in the oral tradition of the Cree. Therefore, the interpretation of the spirit and intent of the treaties must go beyond the written text. The Crown followed a pre-existing, well established pattern of approaching Cree nations to surrender large tracts of land in return for annual cash payments. The Crees negotiating the treaty were at least involved and consulted, resulting in an understanding from their unique perspective of what they were negotiating. For Treaty 5, necessary arrangements were needed for the navigation of the waterways for the purposes of settlement and development. Once an agreement was obtained, a text was produced that was held out to represent the oral promises of the negotiations. Among other things, this included undisturbed access for settlers and traders to specific waters, shores, islands,

inlets and tributary streams.¹⁴ The Cree understanding of the negotiations and oral promises is that the treaty was sacred, and through this solemn agreement, they agreed to share the land. Cree negotiations were primarily concerned about retaining and protecting their lands, requiring necessary access to the land and water to pursue their way of life. The treaty, and what it is and represents, is an intimate link to their continued survival and way of life in pursuit of their customs based on hunting, fishing, trapping and gathering that were the basis of their traditional economies.¹⁵

In 1876, the European pre-treaty practice of not consulting or involving Aboriginal peoples on laws that affect them resulted in the imposition of the first *Indian Act*. Designed to “civilize” and assimilate the Aboriginal peoples in Canada, it also attempted to represent the fiduciary obligation of the government of Canada to protect Indian lands. The current version of the Act prevents the unauthorized use or taking of the lands reserved for Indians,¹⁶ and restricts Indian peoples’ day to day activities. The Act also provides the Governor in Council “whenever he deems it advisable for the good government of the band” to intrude on the governance of an Indian Band and put the selection of its Chief and Council under the *Indian Act*.¹⁷

In 1930, the Northern Manitoba Cree’s relationship with the federal government fundamentally changed with the introduction of the *Manitoba Natural Resources Transfer Agreement*. Again without the consent of Aboriginal peoples, another law was imposed on them. Reflected in the Constitution of Canada, this agreement transferred federal ownership of Crown land to the province of Manitoba. The effect of this was that any lands not reserved for Indians, such as the traditional lands used by Aboriginal peoples, were now considered provincial Crown lands. The right for the province to use traditional lands of Aboriginal peoples for its development purposes included hydroelectric development.

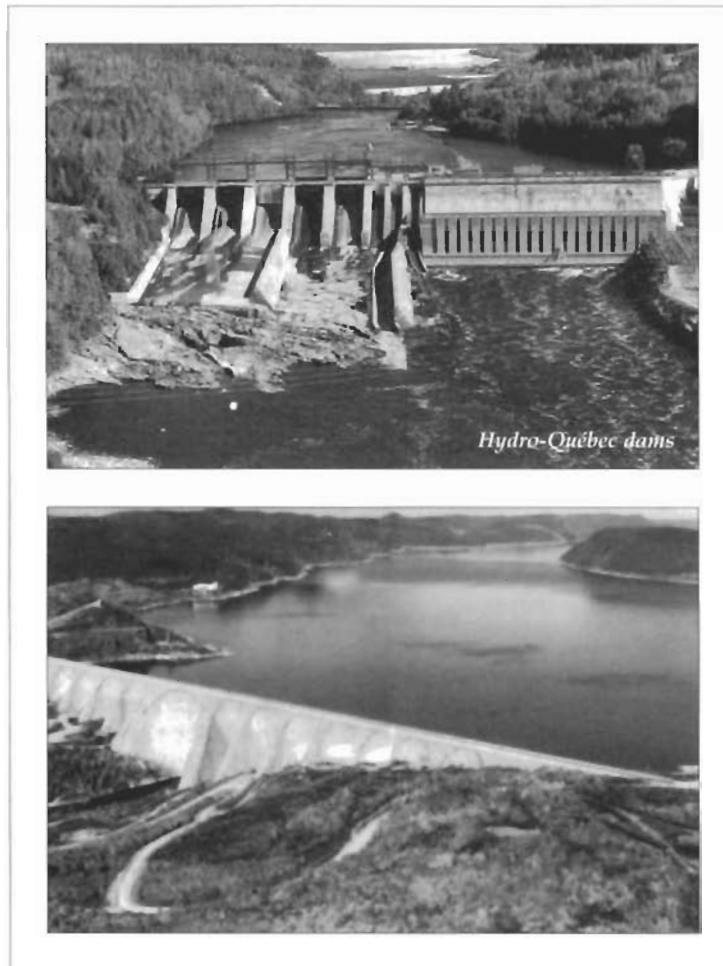
Lake Winnipeg/Churchill-Nelson River Diversion Project

The Lake Winnipeg Regulation Churchill-Nelson River Diversion Project (the Project) is a massive ongoing hydroelectric development project in the northern part of the province of Manitoba. When completed, the Project will eventually have the capacity to generate 8,400 MW. Currently, the Project regulates Lake Winnipeg and diverts about 85 percent of the Churchill River through diversion

channels and control structures in order to increase outflows to five existing dams on the Nelson River. Nine more dams are planned to develop an additional 5 000MW. The regulation of flows of Lake Winnipeg and both rivers allows for peak river flows to match peak periods of demand for electric power during the winter.

The Project harnesses the northerly water flows of the Nelson River drainage basin and the Churchill River drainage basin. The Nelson River drainage basin, one of the main drainage areas in North America, covers an area of one million square kilometres. The western boundary of the Nelson River drainage basin begins at the Rocky Mountains and covers the provinces of Alberta, Saskatchewan and Manitoba; the southern part covers parts of Minnesota and North Dakota of the United States; and the east-

ern part of the basin begins in north-western Ontario. Water of the Nelson River drainage basin flows into Lake Winnipeg, then north via the Nelson River into the Hudson Bay. Due to snowmelts in the spring and heavier rainfalls in spring and early summer, the natural inflows to Lake Winnipeg are greatest during the spring and summer. With a surface area of 15,176 square kilometres, Lake Winnipeg is the world’s thirteenth largest lake and eleventh largest lake with fresh water, and is the seventh largest lake in North America. Just north of the Nelson River drainage basin is the Churchill River drainage basin with an area of approximately 283,350 square kilometres.



The Churchill River flows easterly from the province of Saskatchewan into Manitoba, through Southern Indian Lake, and then northeasterly, parallel to the Nelson River at about 160 kilometres, eventually emptying in the Hudson Bay at the town of Churchill.¹⁸

First considered in the 1950's, the Lake Winnipeg Regulation Churchill-Nelson River Diversion Project was founded in a 1966 agreement. In 1966, Manitoba Hydro, a Crown Corporation owned by the province of Manitoba, received the governmental authority to use Lake Winnipeg as a natural reservoir for hydroelectric development on the Nelson River. Part of a northern development scheme, the agreement between the government of Canada and the province of Manitoba permitted the regulation of Lake Winnipeg because it was seen as necessary to match the consumer needs of electrical power. During the winter when energy demand is high, the natural river flow was low, and during the summer when energy demand is lower, the natural river flow was high. Therefore, it was necessary to decrease the outflows in the spring and summer and make available more outflows in the fall and winter by simultaneously dealing with obstruction by ice of the Nelson River channels.

Lake Winnipeg Regulation

The Lake Winnipeg Regulation required the construction of three diversion channels to substantially increase the winter outflow of the lake, a generating station and control dam, and a dam to prevent water from backing up. The three channels, 8 Mile Channel, 2-Mile Channel and the Ominawin Channel, are each approximately 7.6 meters in depth and range from a width of 120 metres to 300 metres. Designed to bypass natural constrictions of the Nelson River, the channels were constructed by excavating over 37.3 million cubic meters of material. From 1972 to 1977, construction of a generating station and control dam created the 126MW Jenpeg Generating Station. With only a 7.3m operating head, Jenpeg was built primarily for the controlling of the water outflow from Lake Winnipeg in the Nelson River. A direct result of this was an increase in the upstream levels, which were somewhat negligible considering the size of the reservoirs created out of Lake Winnipeg and nearby Playgreen Lake. However, significant changes were made downstream, with a reversal of seasonal flow patterns, summer exposure of lake beds and double the natural winter discharges. To prevent water from backing up into the nearby Kiskitto Lake, a dam had to be built at the outlet of the lake, along with 16 separate dikes at a total length of 14 kilometres, to protect the lake from the highest levels of the Nelson River.¹⁹

The Cree of Cross Lake and Norway House were most affected by Lake Winnipeg Regulation, with downstream impacts on the Cree of Split Lake and York Landing.

Churchill-Nelson River Diversion

The Churchill River Diversion was so designed as a cost saving measure to divert 85 percent of the river to the Nelson River (and nearby Burntwood River) in order to use the Kelsey and Kettle generating stations already built on the Nelson River. By 1972, the requisite licenses were granted, and the diversion was in operation by 1977. The diversion plan centres on Southern Indian Lake, and includes two control dams and an excavated channel. One control dam at Missi Falls controls the outflow of Southern Indian Lake and raised the level of the lake by three metres. The other control dam regulates the flow into the Burntwood River-Nelson River systems. The excavated channel stems from South Bay of Southern Indian Lake to Issett Lake, creating a new outlet to allow water of the Churchill River to flow into the Rat River-Burntwood River-Nelson River systems.²⁰

Diverting the Churchill River provided the groundwork and justification for the construction of three additional dams on the Nelson River. The Nelson River is 656 kilometres long, with its headwaters starting in the northeast corner of Lake Winnipeg. It descends about 217 metres through various falls and rapids before entering the Hudson Bay. The existing five generating stations built on the Nelson River are as follows: Kelsey (first unit in service in 1960, capacity 224MW, operating head 17.1m); Kettle (1971, 1,272MW, 30m); Long Spruce (1977, 980MW, 26m); Jenpeg (1977, 126MW, 7.3m); and Limestone (1990, 1 330MW, 27.6m). The five generating stations produced 86.3 percent of the total generating capacity of Manitoba Hydro in the year ending March 31, 1998. The 1997-98 year proved a profitable endeavour with gross revenues for Manitoba Hydro of \$1 041.1 million (CAD) of which about \$250 million was from exports to the United States, resulting in a net income of \$110 million. The government of Manitoba received direct revenue from Manitoba Hydro in the form of water rental charges in the amount of \$54.6 million (CAD).²¹

The Cree communities of South Indian Lake and Nelson House were most affected by the Churchill-Nelson River Diversion Project, with downstream impacts felt by Split Lake and York Landing.

Social impacts from the project

Problems determining the social impacts of the Project on the Cree can be found in the obvious differences of cultural

values, necessitating the understanding of what a particular culture finds of value. Any determination made of the Cree people may not truly represent the total social impact if it does not take into account their unique perspectives and circumstances. For instance, the premise of the Project was to "develop the north" for the benefit of all Manitobans by regulating and diverting water levels and flows to correspond with market demand for electricity. Manitoba Hydro presented the 1977 completion of the project as needing to flood some inconsequential areas of land, the water levels and flows in some areas to fluctuate no more than the governmental promised and misleading "length of a pencil."²²

From a Cree perspective, since time immemorial they have shared in what the Creator has provided, and any flooding of the land would bring impacts on the environment. Because of their reliance on the environment, the Cree way of life would therefore be directly affected. This would not be in pursuit of development of the Cree as a people. Not only were their lands that were set aside as Reserve lands for them flooded, but the traditional Cree lands were also flooded. Contrary to oral tradition and antithetical to the identity of a Cree person that "unbroken and unimpeded access to the very resources from which they drew the entire economic sustenance of their life,"²³ the flooding would lead to the destruction of traditional pursuits and the basis of their traditional economy. Flooding impacts the lakes, rivers and land, directly affecting their traditional pursuits of hunting, fishing and trapping, affecting their inviolable rights solemnly promised in Treaty 5, rights that were never given up. The violation of the sacred treaty rights can be seen as a direct attack on the Cree people themselves, impacting their means to economically sustain themselves and continue their way of life.

To gauge the social impacts of the Project, the perspective from which one comes to such an analysis is also problematic. To measure the impacts on the Cree caused by the Project, reliance is usually on western-based, scientifically proven studies on non-western societies. The lack of available literature on this subject is proof of the generally regarded notion that there were no adequate and comprehensive pre-project environmental or social impact studies performed to properly base an analysis of social impacts. Ironically, for issues of compensation and mitigation, the very parties that created the Project pursuant to their concept of development rely on their lack of conducting such western-based studies to provide remedies to the Crees. In any event, existing studies, such as they are, did not adequately consider the Cree people, their traditional knowledge, or the importance of the environment to their traditional way of life.

Some studies, like the 1975 eleven-volume study done while construction was already to proceed,²⁴ were not

comprehensive and inadequate to be used for baseline data.²⁵ The literature that does exist is mainly for only one community, South Indian Lake,²⁶ done because there was some discussion as to the degree to which water levels were to be fluctuated, necessitating either the complete relocation of a community or partial relocation. In addition to the lack of pre-project studies, the Project is riddled with a lack of comprehensive post-project environmental or social impact studies. Except for the 1996 Split Lake Cree Nation environmental assessment, most studies are disparate studies on discrete scientific matters. The Split Lake study recognized the inadequacies of any social impact assessment because of the lack of baseline data.²⁷

Despite the lack of studies conducted from a western, scientific perspective, there exists a wealth of information from the Cree people themselves. Many Elders, in the oral tradition of the Cree, possess traditional knowledge, and are able to relate how things existed before the Project. The Cree perspective has been presented in oral evidence on record, and should be considered as valid and demanding of respect when dealing with social impacts.²⁸ Unfortunately, over the years that the project has been in place, the living source of information of the social impacts of the project in the form of Elders who possess the traditional knowledge, are passing away. Consequently, addressing the social impacts continues to get harder to measure from either perspective since the western-based scientific measurement is lacking, and the traditional knowledge of the Cree slowly gets lost.

With the above in mind, the construction of dams changed the water regime resulting in adverse impacts on the ecology that socially affected the Crees. One obvious direct result is the impediment of the navigation of lakes and streams, fundamentally altering the way of life of the Cree in all seasons of the year. Crucial to the continuance of the Cree way of life to fish, trap and hunt, it is essential to travel by water to get to these animals. The changes in the water regime resulted in water level fluctuations, flooding, submerged rocks and vegetation that destroyed boats and motors, and floating debris from flooded vegetation, impeding navigation and trepidation when travelling on the water. In winter, ice formations and hanging ice and slush have caused numerous accidents, loss of property and deaths, along with added insecurity about the safety of travelling on the ice.

The change in water flows brought on by the dams increased erosion and sedimentation within various lakes and rivers. Numerous types of fish, especially sturgeon that was once very numerous in the area but is now an extirpated species, have been impacted by the Project in a variety of ways. Elevated mercury levels in fish, that were then passed onto fish-eating fur-mammals, were found by scientific studies,²⁹ and the Crees have found that the taste of various animals have changed, becoming soggy,

muddy, moldy or mushy, depending on the animal.³⁰ Increase of water flows in various spanning grounds resulted in sedimentation, leaving less conducive environs for fish eggs to thrive. In some affected lakes, the quality and number of fish caught were decreased, while in other areas fishing completely ceased to exist. Consequently, fishermen have to travel further and work longer days, to maintain income and harvest yields. Nets and equipment have been damaged and affected in a variety of ways; from being caught on submerged trees to the "catching" of sludge on their nets.³¹ Many Cree no longer fish, losing their traditional source of livelihood and maintenance of their cultural identity.³²

The change in water flows brought on by the creation of diversion channels for the dams brought about its own impacts. For instance, 2 Mile Channel, excavated at the top of Lake Winnipeg into nearby Playgreen Lake had a devastating impact on the surrounding shoreline. Where there were once pristine beaches on the north shore of Lake Winnipeg, the beaches are now gone. The water has washed away the sand and has started to further erode the shoreline. Erosion caused by this diversion channel alone continues at about 50 feet per year.³³

Fishing has not been the only traditional pursuit impacted, hunting and trapping have also been affected. Moose prefer to eat the food that grows along the shoreline,³⁴ the flooding affected this environment. While caribou may not have been so affected by such shoreline availability for food, the change in the water regime, lack of availability of foods in flooded areas and the construction of hydro lines ultimately have led to a change in migratory patterns. Although an economic benefit exists for some trappers to continue to pursue trapping, it is actually carried out for its cultural or spiritual significance, in recognition of its fundamentals to the Cree way of life.³⁵ Impacted fur bearing animals include beaver, muskrat, mink, otter, ungulates and rabbits, affecting the traditional trapping of these animals. The commercial hunting of all animals, including waterfowl, along with fishing and berry picking was often done for personal consumption. A decreased amount of the traditional foods resulted in an increase on the reliance of store bought foods which has changed the eating habits, nutrition and health of the Cree.³⁶ The Cree had further benefit from the eating muskrat and beaver that had themselves eaten plants found in the water which had medicinal properties.³⁷ The distrust of the environment due to the impact of the hydro project including its change in the water which became unsafe to drink, strikes at the core of Cree values and identity. Impacts on health come with the change in ecology, as there is also a change in availability of medicines.

In addition to the impacts on the traditional life of the Cree in general, specific impacts on women include the

role of women in the family. Before the flooding, women would accompany the family out on fishing, trapping and camping excursions. With a decline in fishing, hunting and trapping, a corresponding decline occurred in the domestic harvesting, an activity which involves family interaction and participation in traditional activities. Because of the danger created by the unsafe water and navigational conditions, many women now simply stay at home. Indeed, the recreational opportunities for families to pursue were plentiful prior to the flooding. On pre-existing pristine beaches, swimming was readily available, and the lakes and rivers provided excellent skating, fishing, hunting and boating opportunities for families to enjoy together. After the flooding, beaches and campsites were inundated and washed away, and the rivers became unsafe to navigate and swim. The lack of recreational activities and traditional customary pursuits, coupled with the unusual overrepresentation of women looking after the family and children, had meant the loss of traditional activities. As a result, children and others increasingly who were reliant on social assistance, became involved in mischief and law breaking, alcohol abuse, and sometimes suicide.³⁸

Finally, all things in life have a spiritual value for the Cree. This spirituality does not give men or women the right to destroy that which is sacred. Therefore, the trees, fish and animals all have a sacred value. It is in this sense that the damages stemming from the hydro project are as serious as the desecration of temples or places of worship, as the environment is, in a sense, the Cree peoples' "place of worship."³⁹ It is this spiritual aspect, like the customs and traditions, that are very hard to measure. Damages paid back in money for compensation do not address or mitigate the violence done to spiritual values,⁴⁰ and, at times, monetary compensation is an inappropriate way to address these impacts.

Additional impacts: negotiated agreements

The way in which the Project was dealt with in various communities created its own share of social impacts. The social impacts faced by some communities that were impacted, correspondingly relate to the way they were dealt with by the governments of Manitoba and Canada and Manitoba Hydro. Three situations exist that have lent to their own social impacts: lack of negotiated agreements to address the adverse impacts of the Project; the Northern Flood Agreement; and comprehensive agreements.

Lack of negotiated agreements

The Fox Lake Cree is one example where there was no agreement made to address the adverse impacts of the project.⁴¹ Residing in the area of the town Gillam, the Cree

of Fox Lake were living on Crown land which was otherwise unoccupied and unallocated. Fox Lake had unmet entitlement to Reserve lands, and had requested allocation of the lands they were living on. The lack of Reserve lands provided to be disadvantageous for Fox Lake. The town of Gillam was in an ideal geographic location for the transportation of hydro workers necessary for the construction of the Kettle and Kelsey generating stations that occurred in the late 1960's. As a result, the local government district of Gillam was created in order to authorize, plan for and implement the development of the Gillam area in support of the Project. The development of Gillam led to a greatly expanded town area that included the settlement of the Fox Lake Cree.

Unprotected by the lack of Reserve status and perceived as "squatters" on provincial land, Fox Lake was at the mercy of the town planning of Gillam. Seen as substandard and unworthy of further investment, the existing housing of the people in Fox Lake were judged to be expended for the purposes of the project. Consequently, the town of Gillam proceeded with a plan to demolish and relocate existing Cree residences. The community was relocated, including the moving of graves sites to accommodate the building of a hospital. The relocated housing for the Crees was below the standards set for the new Hydro employees moved to the area.

The Cree of Southern Indian Lake are another example where no agreement was reached to deal with the adverse impacts of the Project. Despite the community being made up of Treaty Indians, like the Fox Lake Cree, they were not living on federal Reserve lands and were treated as "squatters." However, they were living on Southern Indian Lake, a lake located on the Churchill River that was seen by Manitoba Hydro as essential for the diversion of its waters to the Nelson River. Despite hearings and an attempted court injunction that ultimately failed, the diversion eventually was constructed, resulting in the raising of the lake an additional three metres.⁴² On the understanding that they would receive benefits out of the Project, the Cree of Southern Indian Lake moved. Going into negotiations to retroactively deal with the effects of the Project, Southern Indian Lake has received some monetary compensation, but none that they consider enough to adequately "face the harsh realities of trying to make a living off a dying lake."⁴³

The lack of any negotiated agreement because of the lack of the *Indian Act* Reserve lands has left these two communities alone to deal with the impacts and future effects of the project. Local attempts to obtain adequate compensation from parties that do not see them as worthy of compensation has continued to be the source of many social problems in the communities.

The Northern Flood Agreement

The Northern Flood Agreement (NFA), is an agreement between Canada, the Province of Manitoba, Manitoba Hydro and the Northern Flood Committee, an organization representing the interests of the five Cree communities impacted by the Project to deal with the effects and future unforeseen effects of the Project. The five Cree communities represented by the Northern Flood Committee are Split Lake, York Landing, Nelson House, Norway House and Cross Lake. Leading up the negotiations of the NFA⁴⁴, in 1971, the governments of Manitoba and Canada jointly agreed to carry out a study to "determine the effects which the regulation and diversion projects (were) likely to have on other water and related resource users, to indicate ways in which the projects (might) prove beneficial to such other uses, to recommend modifications in the design and operation of the works, and to recommend remedial measures where considered necessary to lessen undesirable effects."⁴⁵

Prior to the signing of the NFA, the 1975 Final Report of the Lake Winnipeg, Churchill and Nelson Rivers Study Board that led up to the negotiation and signing of the NFA only hinted at the devastation to come.⁴⁶ The Recommendations called for a settlement that Manitoba Hydro and other resource developers provide just compensation or mitigation for all damages resulting directly from the developments. Following those Recommendations, the NFA created a special appeal mechanism to be established to which unresolved compensation issues can be referred for adjudication, and a mechanism to be established to deal with social and related economic issues including (a) information and communication problems related to hydroelectric development with particular emphasis on the alleviation of social and psychological stress, (b) mitigation and compensation issues, and (c) monitoring and analysis on ongoing social and economic changes related to hydro-electric development and, more generally, northern development.

Different cultural perspectives of the parties influenced the negotiations leading up to the signing of the NFA.⁴⁷

A culturally biased concept of the relationship of the human species to the rest of the environment forms a *leitmotif* woven through the negotiations leading to the NFA and through the Agreement itself. The concept reflects the attitude of mainstream institutions, (including the management of Manitoba Hydro and the governments of Manitoba and Canada), and aggravates the conflict between these institutions and the First Nations. The belief that the untamed Nelson and Churchill rivers flowing unharnessed to the sea constituted a wasting asset and unused resource is entrenched in the Agreement. Established conventional wisdom saw, (and sees) the environment as existing for the use of man, and describes all non-human components of the environment as

"resources", i.e., as natural sources of wealth or revenue. It is an established and generally accepted corollary of this view that failure to develop and use such resources would be improvident and foolish, and in the view of some, a waste of assets proffered by a benevolent providence.

Manitoba and Manitoba Hydro held to the notion that environmental damage could be mitigated in some measure and that, beyond mitigation, monetary compensation would equate with environmental damage. They also held the view that money paid to adversely affected persons (singly or in communities) would compensate for insults to the environment. The prevailing view was that environmental damage is transactional and that it can be mitigated or compensated by tendering money; the symbol and cipher for all things of material value.

The Cree view of environment stands in strong contrast to that of the Project proponents. Impacts to the environment are seen as defilement rather than damage. Neither compensation nor mitigation are always acceptable forms of redress. This view is based upon concepts of inter-specific equality and reciprocal behaviour. Moreover, man has no exclusive claim to proprietary right to the environment and consequently, compensation paid to humans does not necessarily balance insults to the environment or insults to other species.

The importance of Reserve land to Cree people is exemplified in their language where Reserve is called "iskunikun" which literally translated means "the part that is left", the implication being that only a small portion of land remains of the vast territory which was "shared" under Treaty. The insignia on NFC letterhead reads "OUR LAND AND WATER IS OUR LIFE".

"Our world view is wholistic (sic). Order and balance are two basic and fundamental principles inherent to the Cree cosmology. A lack of order or balance invites chaos and sickness. When you dam and quiet the voice of yet another river system, you have pronounced the death sentence upon ten thousand people. When you transfer, move, re-arrange and change the face of shorelines and the delicate balance of eco-systems, you are playing god; and yet you are not god. First there are four elements which sustain life: earth, water, air and fire for cosmological order and physical existence to prevail. In the Indian world there is a fifth and more important order of consideration, that of the spiritual dimension. We the human being, consider our place upon mother earth of equal value and importance as these trees you would see standing raped and naked out in the water. We are a people whose lives are inter-woven to the waters and forests of these lakes, of these lands. My ancestors did not consider themselves sophisticated or superior over any other living species." (Chief Norman Linklater, May 27, 1992 in Conawapa Environmental Review Panel, June 1992).

"It is hard to separate the issues of hunting, fishing and trapping because these issues are our livelihood which are a fundamental part of our land and water. Our land and our water is our way of life. There is no dollar value to the loss of livelihood..." (Cross Lake Elders Group, May 29, in Conawapa Environmental Review Panel, June 1992).

"The land has been provider of our people; a mother. Our people have always been dependent on the land to survive; like a baby depends on its mother to survive. If you continuously change and deplete the resources of the mother, the baby will die. The same people will lose their traditions and will cease to exist as they had once before. We would lose our identity as a people..." (Rusty Beardy, York Landing First Nation, May 30, 1992 in Conawapa Environmental Review Panel, June 1992).

In 1977, the NFA was signed, despite the Crees negotiating under unfair circumstances as the construction was already under way. The NFA represents a progressive response to the impacts of the Project, covering almost all aspect of the possible impacts that could be related to Hydro development, and providing a means to address the property, environmental, and social problems created by the Project, without simply paying out a lump sum of cash for compensation.⁴⁸ Considering that construction had already begun, the time that the parties were under to negotiate resulted in a lack of agreed definitions, definitions that could have been worked out if a longer time was available for negotiations. Nevertheless, the requisite open-ended aspects of the terms and definitions allowed for contemplation of the future undetermined adverse effects, but have subsequently led to be one of its greatest weaknesses.

The most prominent aspect of the NFA, sometimes referred to as the heart of the NFA, is Article 16 and Schedule E. Schedule E provides for a community development plan and planning process for the elimination of mass poverty and unemployment caused by the Project.⁴⁹ Lands are to be given in exchange for the flooded lands. Free and normal navigation of the waterways by the Crees is guaranteed. Impacts to personal property can be dealt with by making a claim for damages. Protection is provided to cemeteries and objects of cultural significance. Programs are to be developed for addressing the impacts to trapping and fishing. Potable water is to be made available. Employment, education and training are to be provided. Environmental impacts are to be corrected and monitored.

As a solemn agreement between all the parties, the Cree people and Elders view the NFA as a treaty. The people recognized the importance of what they were told orally; that the Project would produce so much revenue that the money would go back into the communities and their lives

would be better through the elimination of mass poverty and unemployment. For them, the NFA represents compensation for adverse affects from the Project and the basis for the development of a viable and sustainable Cree livelihood in their traditional lands.⁵⁰ The Elder's and Cree peoples' understanding that the NFA is a treaty has been supported by the 1991 report for the Manitoba Aboriginal Justice Inquiry.⁵¹ In this vein, one of the co-authors of the NFA has explained that it is a uniquely novel, open-ended and long-term social contract of unprecedented rights, benefits and entitlements that binds both the federal and provincial governments, complete with its own private court and court procedures to make it work.⁵² This view was supported by the then parties and after its signing the then federal Minister of Indian Affairs who, after the negotiations and ratification, declared the NFA was a "Charter of Rights and Benefits" for those Cree Nations involved.⁵³

The NFA reflects the Cree peoples' respect and importance toward land, providing access to their traditional land use territories and granting easements for flooding of their land. It did not require the Cree to surrender their Reserve lands. Compensation lands were to be provided for the land that was flooded, representing the legal, moral and ethical way to deal with Aboriginal people, their land and their rights. The NFA is to last for the duration of the Project, without any definitive termination date and requires continuing obligations on behalf of the government and Manitoba Hydro to respect its spirit and intent for generations to come. In addition, the NFA obligates the Parties to jointly examine ways of managing wildlife resources, with the Crees having a say and encouraging maximum resource harvesting activities and opportunities.

Moreover, the NFA requires the Parties to identify Project related impacts and monitor environmental and socio-economic changes in the communities and surrounding areas. Any disputes are to be resolved by arbitration, potentially a more flexible and less costly approach than litigation, with costs for the NFA Cree communities to be paid for by the other parties to the NFA. With rules of evidence in arbitration not as strict as those in a court of law, the NFA allows for the inclusion of traditional oral testimony when determining impacts of the Project.

Different perspectives on the NFA have led to the governments and Manitoba Hydro to pursue strategies to restrictively interpret the NFA. Contrary to the view of the Cree that the NFA is a treaty, the governments of Manitoba and Canada and Manitoba Hydro have either not commented on this aspect or denied its status as a treaty, effectively putting at odds the interpretation of its implementation to its full "spirit and intent."⁵⁴ The effectiveness of the NFA has been severely compromised

by lack of a defined implementation process and a co-ordinated body to oversee implementation. The open-endedness of the NFA has required good will, co-operation, and energetic co-operation for full implementation. Unfortunately, like some aspects of Treaty 5 itself, some clauses of the NFA are ambiguous and called for further negotiation.

Predictably, the parties other than the Cree had problems with implementing without precise definitions. Thus, considering the time that the parties were under, and the fact that the construction of the Project was taking place, the technicality as to definitions would arguably have been too long to work out during negotiations. The requisite open-ended aspects of the terms and definitions have subsequently been one of its greatest weaknesses. Identified shortcomings of the NFA⁵⁵ include undefined terms, a lack of definition or scope, along with a lack of specific time limits or methods for the negotiation of programs of compensation and mitigation in respect of the community traplines and fishing. There is no provision or requirement for monitoring or evaluating the resource harvesting programs. As well, there is a lack of defined funding, timelines, project impact monitoring, and failure of the proposed Wildlife Advisory and Planning Board for the NFA to effectively operate.

As mentioned, one of the most problematic aspects of the NFA is that comprehensive pre and post project environmental assessments were not conducted, and while the NFA require environmental assessments and socio-economic impacts monitoring, they were never established. In a review of the handling of the NFA by the federal Department of Indian and Northern Affairs in 1992, the Auditor General of Canada confirmed a need for a comprehensive environmental impact assessment.⁵⁶ While there have been numerous specific scientific studies performed by the governments of Canada and Manitoba and Manitoba Hydro, none of them have studied the social impacts. Only one NFA community in 1996, Split Lake Cree Nation, has finally obtained an environmental assessment, which lacked a comprehensive social impact assessment.⁵⁷

Finally the arbitration process, as a means of settling disputes, has resulted in a lack of implementation, with parties focussing on settling claims and ultimately discharging responsibility under the NFA. While the rules of evidence are not as strict as a court of law, the provision of evidence to support claims has been problematic since there were no adequate pre-project studies done. Nevertheless, in some instances oral testimony has been allowed, but the problem with this is for the Elders and people who know how things were prior to the project are passing on. Ultimately, the adversarial nature of arbitration has left the claims process as a sole benefit to the numerous lawyers and consultants, leaving most Crees

without realizing much, if anything, from the process. Even the NFA Cree communities' attempts to force implementation through the Arbitrator were thwarted by the government of Canada's legal position that the Arbitrator cannot order the government to do anything except issue recommendations.

As with most agreements and treaties with Aboriginal people in Canada, the government must respect and follow through with such duties, responsibilities and rights accorded to the Aboriginal people. Yet, as in the words of the former federal Minister of Indian Affairs, there has been "no political will on the part of government" to give full force and effect to the NFA, leaving many empty promises.⁵⁸ The social ramifications of this have meant that the communities have not seen the promised mitigation and compensation for adverse effects of the project, leading to distrust and frustration with the other NFA parties. In some communities, the frustration has caused animosity, usually amongst those that believe in the solemnity of the NFA and recognize it as a treaty, and others that have been frustrated without seeing much benefit from it.

Comprehensive implementation agreements

Over the years, there has been numerous benefits which have flowed from the Northern Flood Agreement, including millions of dollars paid out in compensation and the provision of water and sewers.⁵⁹ Despite these benefits, having such an agreement has not meant that the Northern Flood Committee, as a collective entity of five Cree communities, has been dealt with any better than those communities without such an agreement. The NFA has left those Cree disappointed, with unmet expectations that the other parties would deal with all the necessary remedial, mitigatory and compensatory aspects of the agreement that arose from the Project. An agreement with such legal obligations in the Northern Flood Agreement contains the best intentions and respect for Aboriginal and treaty rights, but has proved to be difficult to fully implement. Indeed, the arbitration process has been expensive, confrontational and time consuming, with benefits taking years to finally be resolved.

In light of the problems concerning implementation of the NFA, and considering the continuing obligations of the governments and Manitoba Hydro under the NFA, a "Proposed Basis of Settlement" (PBS) was arrived at after negotiations in 1990. The PBS was subsequently rejected by all five Cree communities. However, the PBS was individually accepted by the Split Lake Cree, with three more of the communities subsequently entering various forms of "comprehensive implementation agreements" to implement the NFA. For those that sign such agreements, compensation land is provided along with monetary compensation, and there already has been payments in

excess of \$220 million (CAD), including over \$100 million (CAD) in Manitoba Hydro Bonds to be held in trust.

The comprehensive implementation agreements do not provide for the NFA remedial and mitigatory obligations of the parties. They also limit NFA ongoing liabilities of the parties, and restrictively interpret terms and obligations along with providing numerous indemnity and release clauses in favour of the governments and Manitoba Hydro. In addition, the comprehensive agreements neglect to address the elimination of mass poverty and unemployment and provide for such remedial and mitigatory environmental works. Moreover, the NFA right of first priority to resources for the Cree is taken away, the province of Manitoba has absolute power to regulate the use of lands and waterways enabling the province to impose fees, issue permits and licenses on any person, including First Nations people. The process of reducing the impacts of the Project to cash payments has done exactly the opposite of what was recognized even before the flooding and construction of the Project. The reduction of the environment to a commodity with no spiritual value effectively undermines the Cree cultural identity and can be seen by the governments' and Manitoba Hydro's view that compensation was proposed solely to take care of "damage to the economics of the environment."⁶⁰

Because the NFA has not dealt with the impacts on the 'five Cree communities collective' according to its original spirit and intent a division has been created between the communities. Reflected in the NFA, there were provisions to encourage the Cree to continue their resource harvesting activities to the maximum extent possible, to ensure their traditional way of life would remain intact. This would eventually be reduced to monetary terms by the other parties, contrary to mitigatory and remedial measures preferred in the NFA.⁶¹ Supported by Manitoba Hydro and the province of Manitoba, the social impacts of the Project are reduced to a technical and economic analysis, payable to the Cree Nations to allow them to deal with the money as they seem fit, and justifies their position of paying off and paying out of the NFA obligations.⁶² Ironically, while the government and Manitoba Hydro continue to consider monetizing impacts from Hydro development, they are against the idea of revenue sharing, a process by which the Cree could receive ongoing financial compensation for ongoing effects of the Project. Manitoba Hydro has restrictively seen this as providing a derived benefit from communities that may be in the right place and at the right time when they are flooded. In addition, they perceive this as unfair to other Manitobans, ultimately affecting the purpose of hydro development for the provision of low hydro costs to all Manitobans as it would require raising the costs of generating electricity in order to pay for such sharing of revenue.⁶³

Numerous indemnity and release clauses for the governments and Manitoba Hydro that come along with the comprehensive agreements effectively terminate the ongoing rights of the NFA, and terminate the ongoing fiduciary obligations of Canada. It is noted that while the comprehensive agreements provide money and lands to the Cree communities that sign in, it also provides for an increase in the water levels, a fact that was not disclosed when the draft agreements were being brought to the people. Basically, this means that the compensation for the effects of the Project has been offered contingent on accepting future development while at the same time eliminating the NFA rights to address future impacts of such development.

There is no requirement in the NFA for rights to be lost in order for it to be implemented. The extinguished NFA rights that could address many of the remedial and mitigatory work that still need to be done to address the social impacts and environmental devastation simply perpetuates such problems, promoting the impoverished state of the Cree. Contrary to the government of Canada's practice with the NFA Crees, the report of the Royal Commission on Aboriginal Peoples found that the practice of extinguishing such Aboriginal and treaty rights is not an option. Such extinguishment continues the deprivation of the Cree's own means of subsistence. In this regard, agreements that extinguish such rights are a violation of the human rights of the Indigenous people of Canada, and have been so found by the respective United Nations bodies that consider violations of article 1 of the *International Covenant on Economic, Social, and Cultural Rights*⁶⁴ and the *International Covenant on Civil and Political Rights*.⁶⁵

Additional impacts resulting from such agreements exist in the form of violation of the traditions of the Cree and their human rights directly at the local community level. With its fiduciary obligations, the government of Canada must ensure that with such agreements that extinguish rights and affect Aboriginal and treaty rights, it has to consult and obtain the informed consent of the Cree people themselves, not just the political representatives of the community. This should include public meetings, open discussions and explanations of the agreement. For example, in the community of Norway House, this never happened, and the rights associated with conducting such consultations and democratic expression. The way that the government of Canada supported the ratification process in Norway House is an example of the Cree traditions and the violation of human rights that took place.

In Norway House, the traditional way for the community to make decisions was by way of consensus at public meetings. However, through the strict adherence of the *Indian Act*, the Department of Indian Affairs only recognizes the decisions of the Chief and Council. After the 1952 imposition of the *Indian Act*, the people of Norway

House continued to have a voice in the governing of their affairs. This changed when, in the late 1980's the people did not like what the Chief at the time was doing concerning the NFA. In an attempt to exercise their traditional rights to control what the Chief was doing, they called on the Department to listen to what the people of Norway House had to say. The Department responded by saying that through the *Indian Act*, the democratically elected Chief was the ultimate decision-maker, and no matter what Chief and Council did, it was a local governance issue, and they would only support such decisions. This began a process whereby the people of Norway House lost their right to appeal to the federal government to ensure that its fiduciary obligations are met, and resulted in costly court action to pursue. It also allowed, under the western based concept of democracy, to grant Chief and Council the power to do whatever they want, contrary to Cree traditional forms of governance, but with the support of the federal government.

Prior to the local ratification referendum for the agreement, the Chief and Council destroyed the only free and public venue for public meetings. With the consent of the federal government, democratic expression was stifled.⁶⁶ Allegations of human rights violations resulted, which included arbitrary arrests and detentions of Norway House Band members when they tried to use the radio station.⁶⁷ Additional allegations of human rights violations include payments of money for votes and the inducements and threats to prevent going to court to challenge the agreement.⁶⁸ Discussed in the Canadian House of Commons,⁶⁹ and at the Parliamentary Standing Committee on Aboriginal Affairs and Northern Development, these issues are still outstanding. The impact on the people was ostensible a "chill" in pursuing their individual and collective traditional Cree way of life and governance. Not all communities have faced this situation, some communities, such as Split Lake in the study commissioned by the Chief and Council of Split Lake, have identified the strengthening of the local Chief and Council governance.

Alternatively, Cross Lake First Nation, the only NFA Cree community not to sign a comprehensive implementation agreement, is a unique example of the social impacts resultant from the treatment of the governments and Manitoba Hydro. Surviving an effort by the government of Canada to divide the Cree communities to accept cash in exchange for termination of their NFA rights, Cross Lake has suffered the "carefully calibrated governmental policies of impoverishment, indebtedness and dispersal."⁷⁰ Cross Lake is now in a position of working with the government and Manitoba Hydro to implement the NFA and not sign an agreement to terminate the NFA. The ability for the Crees of Cross Lake to implement the Northern Flood Agreement stands out as a model for the

pursuit of the inherent right to self-determination. After negotiations for a comprehensive implementation agreement with Cross Lake failed in 1997, the people faced a "confused reawakening in which anger and sorrow over years of unattained grievance mingled uncomfortably with a sense of empowerment."⁷¹ This has led to the galvanized collective democratic expression of the Pimicikamak Cree Nation of Cross Lake. The people of Pimicikamak Cree Nation have since pursued their inherent jurisdiction in determining their inherent right to govern themselves and implement the NFA following its spirit and intent. Grounded in the rights that the Creator has bestowed upon them and reflective of the unwritten, oral traditions of the people, the *First Written Law* of Pimicikamak Cree Nation outlines how they govern themselves. It went much further than the delegated form of governance as reflected through the *Indian Act*. It created Chief and Councils, and imported Cree concepts with respect for human rights. A "legislative assembly" called the Four Councils was created. The Four Councils reflect the people of Cross Lake: the Elders Council, Youth Council, Women's Council and the Chief and Council that acts as the executive arm of the Nation. Not only has this initiative reacquainted the women of Cross Lake with their traditionally important role in the community,⁷² it has ensured that the traditional concepts of governance continue to reaffirm their collective Cree identity while protecting the NFA provisions to provide for remedial and mitigatory works.

No longer under the ultimate authority of the Chief and Council and the Department of Indian and Northern Affairs, the people of Cross Lake now are able to have their say in the local government structure and decide their own destiny. The collective will of the people of Cross Lake is done through an open General Assembly where laws are made. One of the first laws created is the *Hydro Payment Law* which has put hydroelectric bill payments into a trust until the NFA is implemented according to its spirit and intent. Subsequent laws positively reflect their Cree identity and include a citizenship act and an election act.

Conclusions

The Lake Winnipeg Regulation Churchill-Nelson River Diversion Project resulted in numerous adverse impacts on a number of Cree communities. Some communities were not as fortunate as others to enter into agreements to address those affects, but nevertheless retained their Aboriginal and treaty rights. The Northern Flood Agreement, despite its problematic origins, unfair negotiations and lack of adequate studies of the environmental, social and economic consequences, was a

negotiated solemn agreement to deal with the construction of dams. Far from being a perfect agreement, it is an agreement that recognizes the legal and moral obligations of the governments and Manitoba Hydro. But for the impacts on the Pimicikamak Cree Nation of Cross Lake, the history of the NFA, including the resulting comprehensive implementation agreements, is a study in how to avoid and get rid of rights and benefits created by a dam project. At the end of the day, the varied experiences of the numerous Crees of northern Manitoba with the Lake Winnipeg Regulation and Churchill-Nelson River Diversion Project lend themselves to the following:

1. *Human Rights and Aboriginal and Treaty Rights*
Governments should engage in solemn and good faith negotiations to respect the rights of Indigenous peoples, including national and international obligations, and ensure that such rights are protected and promoted in any ongoing or future dam project. In any agreement that may be negotiated, Indigenous peoples should not have to surrender any of their Aboriginal and treaty rights to obtain monetary, remedial or mitigatory compensation.
2. *Consultation*
Adequate and meaningful consultation, with the informed consent and full involvement of Indigenous communities is essential for any future dam development.
3. *Respect*
Existing Aboriginal and treaty rights, and differences in worldviews, governance structures and cultural perspectives must be respected when dealing with dam developments, and to this end, the inclusion of traditional knowledge should be incorporated in processes concerning dam planning and ongoing operations.
4. *Studies*
Pre and post project studies should be performed to provide baseline data and a means to measure the physical, biological, social, economic and cultural impacts. Such studies should not be biased to a western, scientific perspective, and should provide for Indigenous peoples' perspectives, cultures and traditions, acknowledging the importance of traditional knowledge.
5. *Remedial and mitigatory efforts*
Monetary compensation should not be the sole compensation from the construction of dams, and should be provided in addition to the remedial and mitigatory efforts.

Notes

- ¹ For more information please see: Innu Nation Mamit Inuit, Hydroelectric Development in Nitassinan - Développement hydroélectrique au Nitassinan (www.innu.ca, last update: 7 July 1999).
- ² From Grand Council of the Crees, Hydro Development (www.gcc.ca/Environment/hydro/hydro, last update: April 06, 1999).
- ³ Waldram, James B., "Hydroelectric Development and Native People in Canada," in *As Long as the Rivers Run: Hydroelectric Development and Native Communities in Western Canada*, The University of Manitoba Press (Winnipeg, Manitoba, 1988) ch. 1, pp. 3-17 at p. 10.
- ⁴ Commission of Inquiry into Manitoba Hydro Commission of Inquiry into Manitoba Hydro Final Report (Winnipeg, Manitoba, 1979); and Northern Manitoba Economic Development Commission, A Benchmark Report (Winnipeg, Manitoba, December 1992).
- ⁵ Waldram, *supra.*, at pp. 10-2.
- ⁶ Waldram *supra.*, at ch. 13.
- ⁷ *Athabasca Chipewyan First Nation Inquiry WAC Bennett Dam and Damage to Indian Reserve No.201 Claim* Indian Claims Commission Proceedings (Ottawa, Ontario, March 1998).
- ⁸ Numerous words identify the Cree people in Northern Manitoba. Through the federal *Indian Act*, the Canadian government has imposed its terminology through its legal definition of Canadian Indigenous peoples. The *Indian Act* refers to Indigenous peoples as "Indians," and refers to Indigenous nations as a "band of Indians." Subsequent words in Canada used to represent an Indigenous person include "Aboriginal," and words to represent Indigenous nations include "First Nation." In the case of some Cree nations in Northern Manitoba, they are referred to as a "Cree Nation." Accordingly, "Aboriginal," "band member" or "First Nation member" are to refer to an Indigenous person, and "band," "First Nation" or "Cree Nation" refers to an Indigenous nation.
- ⁹ *Calder v. Attorney-General of British Columbia*, [1973] Supreme Court Reports 313 at 328 per Judson J., and referred to in: Canada. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ministry of Supply and Services, Canada 1996) v. 1, p. 44.
- ¹⁰ See Ray, Arthur J., *Indians in the Fur Trade: their role as hunters, trappers and middlemen in the lands southwest of Hudson Bay 1660-1870* (Toronto: University of Toronto Press, 1974).
- ¹¹ Canada. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, Ministry of Supply and Services (Ottawa, Ontario, 1996) v. 1, pp. 101-36.
- ¹² *Royal Proclamation of 1763*, referred to in Canada. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ministry of Supply and Services, Canada 1996) v. 1, Appendix D at p. 720, derived from Clarence S. Bingham, ed., *British Royal Proclamations Relating to America*, American Antiquarian Society Volume 12, (Worcester, MA, 1911), pp. 212-18.
- ¹³ Morris, Alexander, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories*, Facsimile reprint of the 1880 edition published in Toronto by Belfords, Clarke, Fifth House Publishing (Saskatoon, 1991) pp. 342-50; *Canada, Treaty 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren's River and Norway House with Adhesions* (Ottawa: The Queen's Printer, 1969).
- ¹⁴ See Morris, Alexander, *supra* at 15, pp. 143-45.
- ¹⁵ Canada. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ministry of Supply and Services, Canada 1996) v. 1 at pp. 159-76; see also text of Treaty 5
- ¹⁶ *Indian Act*, R.S.C., 1985, c. I-5; see sections 28, 31 and 45.
- ¹⁷ *ibid.*, s. 74.
- ¹⁸ Manitoba Hydro, *The Hydro Province* (Winnipeg, Manitoba, June 1998); and Manitoba Hydro, *A History of Electrical Power in Manitoba* (Winnipeg, Manitoba, June 1998).
- ¹⁹ Manitoba Hydro, *Lake Winnipeg Regulation* (Winnipeg, Manitoba, October 1997).
- ²⁰ Manitoba Hydro, *Churchill River Diversion* (Winnipeg, Manitoba, August 1997).
- ²¹ Manitoba Hydro Electric Board, *47th Annual Report* (Winnipeg, Manitoba, July 1998) at p. 43-57.
- ²² Cross Lake Band members' testimony, *Inter-Church Inquiry into Northern Hydro Development* (Winnipeg, Manitoba, June 22 and 25, 1999).
- ²³ Ballantyne, P., Brook P., Burns P., et al., *Aski-Puko: The Land Alone A report on the expected effects of the proposed hydro-electric installation at Witego Rapids upon the Cree of the Peter Ballantyne and Lac La Ronge Bands* (Winnipeg, Manitoba, September 1976).
- ²⁴ Lake Winnipeg, Churchill and Nelson Rivers Study Board, *Lake Winnipeg, Churchill and Nelson Rivers Study Final Report* (Winnipeg, Manitoba, 1975).
- ²⁵ "Given the doubts that were expressed in the 11-volume report, and the many matters that were not considered, there seemed to be a possibility, or even likelihood, that the development could be an ecological mess and social disaster." Gillespie, Colin, Lawyer, 1975 researcher on the potential impacts of the Project *Speaking Notes for a Public Hearing on Hydro Development and Aboriginal People in Northern Manitoba* June 22, 1999.
- ²⁶ For instance, Waldram (1983, 1988) and Wagner (1984), referred to by Larcombe, P.M., *Northern Flood Agreement Case Study in A Treaty Area Phase II Report Contemporary Aboriginal Land, Resource and Environmental Regimes Origins, Problems and Prospects, Prepared For the Royal Commission on Aboriginal Peoples with editorial revisions February, 1995* (Winnipeg, Manitoba, December 17, 1993) at p. 12; Department of Northern Affairs, *Social & Economic Impact of the Nelson River Hydro Development (with emphasis on South Indian Lake) Preliminary Report* (June, 1973); and Manitoba Environmental Council *Southern Indian Lake and Hydro Development* Manitoba Environmental Council (Winnipeg, Manitoba, 1984).
- ²⁷ Split Lake Cree Nation, *Split Lake Cree Nation Post Project Environmental Review Volumes 1 to 5* (Split Lake Cree Nation, August 1996). Concerning social, economic and cultural components see v. 5 at page 70; "There has been very little scientific analysis of the socio-economic effects of hydro-development. The lack of pre-project baseline data and comprehensive post-project monitoring, and the difficulties of isolating the effects of other sources of socio-economic change, have been instrumental in this situation."
- ²⁸ Along with various studies and reports, the author has been informed by various conversations and interviews with numerous Cree from different communities.
- ²⁹ See Canada-Manitoba Agreement on the Study and Monitoring of Mercury in the Churchill River Diversion, *Summary Report and Technical Appendices of the Canada-Manitoba Agreement on the Study and Monitoring of Mercury in the Churchill River Diversion Submitted to The Minister of Environment and Workplace Safety and Health, Province of Manitoba and The Minister of Environment, Canada* (Winnipeg, Manitoba, March 23, 1987).
- ³⁰ Conawapa Environmental Review Panel, *Reports From Community Meetings* Conawapa Secretariat (Winnipeg, Manitoba, June, 1992); and see Elder Sandy Beardy, testimony for hearings on Bill C-56, "An Act respecting an agreement with the Norway House Cree Nation for the settlement of matters arising from the flooding of lands, and respecting the establishment of certain reserves in the province of Manitoba," *Standing Committee on Aboriginal Affairs and Northern Development Evidence March 18, 1999* (Parliament of Canada, www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev57-e.htm, March 18, 1999).
- ³¹ Conawapa Environmental Review Panel, *Scoping Workshops, Volume III* Finlayson Reid Reporting Services (Winnipeg, Manitoba, June, 1992), at p. 397-403.
- ³² Wagner, M., *Northern Development and the Treaty Rights of Hunting and Fishing: A Conflict Treaty and Aboriginal Rights* Research Centre of Manitoba, Inc. (Winnipeg, Manitoba, 1984) at 25.
- ³³ Gamblin, Merna from Norway House states: "Now, our Elders have said that they estimated the spit of land separating Playgreen Lake and Lake Winnipeg would disappear in about 20 more years. In

- talking with people that have worked with the Department of Fisheries and Oceans, they have said the Canadian Coast Guard has been doing studies of the erosion rates in this area on the north shore of Lake Winnipeg since last fall, and also on Playgreen Lake, and what they have found is that the erosion rate is at about 50 feet a year on both sides. And, their estimate for that piece of land separating the two lakes is that it will disappear in 15 years, so the Elders are not that much off the mark" from presentation to the *Inter-Church Inquiry into Northern Hydro Development* (Cross Lake, Manitoba, June 24, 1999).
- ³⁴ Inter-Church Task Force, *Report of the Panel Appointed by the Interchurch Task Force to Hold Hearings into the Impact of Flooding Occasioned by Manitoba Hydro's Project to Develop the Electrical Potential of the Nelson and Churchill Rivers* (Winnipeg, Manitoba, 1975) p. 35.
- ³⁵ While additional research is needed in determining the socio-cultural significance of trapping to native people, trapping still continues as "It appears that trapping is and will continue to be part of the family and community lifestyles in northern communities. It will likely continue no so much for its economic value but rather for its cultural significance" see Ramsey, Bruce, *The Economic and Social Cultural Situation of Native Trappers in Northern Manitoba*, Thesis, Natural Resource Institute, University of Manitoba (Winnipeg, Manitoba, 1975) at p. 73.
- ³⁶ Hunting and fishing has lost its appeal not only because of the reduced availability of meat, but the noticeable difference in the taste of certain meats. The replacement of wild foods has resulted in nutritional affects resultant from relying on different quality and questionable nutritional content of many affordable foods available in northern stores. See for instance Waldram, James. A. *Relocation and Social Change Among the Swampy Cree and Metis of Esterville, Manitoba* University of Manitoba Masters Thesis (Winnipeg, Manitoba, May 1980).
- ³⁷ "...the beaver and muskrat are a good example because these animals are a traditional food source for us. And they eat certain plants that grow in the water. And these plants are medicinal plants, and I am just going to say a couple of names just for the record, "weehess" is one of them, and "waskutamo" that's another one. They eat these plants, and our people would then eat the animals, the beaver, the muskrat, and by eating those animals, we too are eating the medicines. And the growth of those medicines has been severely impacted by the hydro project as well." from Gamblin, Merna, Norway House Band member testimony, *Inter-Church Inquiry into Northern Hydro Development* (Cross Lake, Manitoba, June 24, 1999).
- ³⁸ Conawapa Environmental Review Panel, *Reports From Community Meetings* (Conawapa Secretariat, Winnipeg, Manitoba, June, 1992), testimonies of Pimicikamak Iskewwak Organization and Council of York Landing and Nisichawasihk Local Child Care Committee.
- ³⁹ Gamblin, Merna, Norway House Band member testimony, *Inter-Church Inquiry into Northern Hydro Development* (Cross Lake, Manitoba, June 25, 1999).
- ⁴⁰ Hildebrand-Young & Associates Ltd., *A Proposal to Mitigate Certain Environmental Impacts at Cross Lake, Manitoba Caused by Manitoba Hydro and Affecting Trappers, Hunters and Other Citizens* (Winnipeg, Manitoba, October 1983) pp. 4-6, 19-20.
- ⁴¹ For a complete analysis on the impacts of the Fox Lake Cree, please see: Fox Lake First Nation, *Forgotten Nation in the Shadow of the Dams Grievance Statement* (Fox Lake First Nation, Manitoba, April 1997).
- ⁴² Waldram, James B., "South Indian Lake and the Churchill River Diversion" in *As Long as the Rivers Run: Hydroelectric Development and Native Communities in Western Canada* The University of Manitoba Press (Winnipeg Manitoba, 1988), pp. 115-70.
- ⁴³ Soulier, Joan, Mayor, South Indian Lake, *Inter-Church Inquiry into Northern Hydro*, June 21, 1999.
- ⁴⁴ For a comprehensive review of the NFA negotiations, please see Cobb, Patricia A., *The Northern Flood Agreement History of Negotiation and Implementation, and Recommendations for Improvement*, prepared for the Royal Commission on Aboriginal Peoples (Winnipeg, Manitoba 1993).
- ⁴⁵ Lake Winnipeg, Churchill and Nelson Rivers Study Board, *supra*.
- ⁴⁶ "Given the doubts that were expressed in the 11-volume report, and the many matters that were not considered, there seemed to be a possibility, or even likelihood, that the development could be an ecological mess and social disaster." Gillespie, Colin, Lawyer, 1975 researcher on the potential impacts of the Project *Speaking Notes for a Public Hearing on Hydro Development and Aboriginal People in Northern Manitoba* June 22, 1999.
- ⁴⁷ Larcombe, P.M., *Northern Flood Agreement Case Study in A Treaty Area Phase II Report Contemporary Aboriginal Land, Resource and Environmental Regimes Origins, Problems and Prospects, Prepared For the Royal Commission on Aboriginal Peoples* (Winnipeg, Manitoba 1993, with editorial revisions February, 1995) at pp. 33-5.
- ⁴⁸ Article 24.8 of the Northern Flood Agreement states: "Because mitigatory and/or remedial measures are more likely to have a lasting beneficial effect on the viability of a community and/or on individual residents than monetary compensation, such measures shall be preferred and only where mitigatory and/or remedial measures are not feasible or fail in effectiveness shall monetary compensation be ordered in lieu thereof in respect of any adverse effect."
- ⁴⁹ Article 2, Schedule E of the Northern Flood Agreement states: "The Community Development Plan shall serve as a policy co-ordinating instrument, setting forth the best-case community development scenario and joint action program for the eradication of mass poverty and mass unemployment and the improvement of the physical, social and economic conditions and transportation."
- ⁵⁰ Keeper, J.J., *The Northern Flood Agreement as an Instrument for Social and Economic Equity*, Symbion Consultants (Winnipeg, Manitoba) 1990.
- ⁵¹ "We believe the Northern Flood Agreement is a "land claims agreement" within section 35(3) of the Constitution Act, 1982, and that the rights within the NFA are treaty rights within section 35(1). As a treaty, the Northern Flood Agreement must be interpreted liberally from the Indian perspective so that its true spirit and intent are honoured." The Public Inquiry into the Administration and Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba* (Winnipeg, Manitoba, 1991) at 174.
- ⁵² B. Nowiki and M. Rehbock, "Manitoba Northern Flood Agreement (NFA), Analysis of Unmet Obligations," *Inter-Church Inquiry into Northern Hydro Development* (Winnipeg, Manitoba, June 16, 1999).
- ⁵³ "To commemorate the signing of the Agreement on behalf the Cross Lake, Nelson House, Norway House, Split Lake and York Factory Bands, this testimonial is presented to the Directors of the Northern Flood Committee for their diligent and earnest efforts, and those of the Committee staff, in negotiating a settlement that sets forth for the Bands a Charter of Rights and Benefits made necessary by the efforts of the Lake Winnipeg Regulation and Churchill River Diversion Project." Ministerial Declaration, Signed by the Honourable Warren Allmand, P.C., M.P. Minister of Indian and Northern Development, August 1977.
- ⁵⁴ See Brennan, Bob, CEO of Manitoba Hydro, *Inter-Church Inquiry into Northern Hydro Development Bob Brennan Presentation*, June 21, 1999 at pp. 10-11; and Newman, David, Manitoba Minister of Northern Affairs, *Speaking notes for Honourable David Newman Minister of Northern Affairs Hearings on Northern Flood Development Manitoba Aboriginal Rights Coalition*, June 25, 1999 at pp. 2-3.
- ⁵⁵ Larcombe, P.M., *supra*. at 47, p. 117.
- ⁵⁶ "...we found no evidence that a comprehensive environmental impact assessment had ever been performed. We believe such an assessment is essential for NFA implementation because the purpose of the Agreement is to compensate for adverse environmental impacts." Auditor General of Canada, *The Report of the Auditor General of Canada* (Ministry of Supply and Services, Ottawa 1992) ch. 15, para. 118.
- ⁵⁷ Split Lake Cree Nation, *Split Lake Cree Nation Post Project Environmental Review Volumes 1 to 5* (Split Lake Cree Nation, August 1996). Concerning social, economic and cultural components, see v. 5 at page 70; "There has been very little scientific analysis of the socio-economic effects of hydro-development. The lack of pre-project baseline data and comprehensive post-project monitoring, and the difficulties of isolating the effects of other sources of socio-economic change, have been instrumental in this situation."
- ⁵⁸ Allmand, Warren, Minister of Indian and Northern Affairs in 1977, currently with the International Centre for Human Rights and Demo-

cratic Development; testimony for hearings on Bill C-56, "An Act respecting an agreement with the Norway House Cree Nation for the settlement of matters arising from the flooding of lands, and respecting the establishment of certain reserves in the province of Manitoba," *Standing Committee on Aboriginal Affairs and Northern Development Evidence March 18, 1999* (Parliament of Canada, www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev52-e.htm, March 9, 1999).

⁵⁹ Manitoba Hydro, *Background Information from Manitoba Hydro to the Inter-Church Inquiry into Northern Hydro Development* (Winnipeg, Manitoba, June 21, 1999): over \$125 million had been paid out by the governments of Manitoba and Canada and Manitoba Hydro.

⁶⁰ Inter-Church Task Force, *Report of the Panel Appointed by the Interchurch Task Force to Hold Hearings into the Impact of Flooding Occasioned by Manitoba Hydro's Project to Develop the Electrical Potential of the Nelson and Churchill Rivers* (Winnipeg, Manitoba, 1975) p. 40-3, compared to p. 55-56.

⁶¹ Article 24.8 of the Northern Flood Agreement states: "Because mitigatory and/or remedial measures are more likely to have a lasting beneficial effect on the viability of a community and/or on individual residents than monetary compensation, such measures shall be preferred and only where mitigatory and/or remedial measures are not feasible or fail in effectiveness shall monetary compensation be ordered in lieu thereof in respect of any adverse effect."

⁶² Manitoba Hydro, Technical Report #1, *The Northern Economy, Background Information from Manitoba Hydro to the Inter-Church Inquiry into Northern Hydro Development* (Winnipeg, Manitoba, June 21, 1999).

⁶³ Manitoba Hydro, *Background Paper #4 Manitoba Hydro Impacts within Manitoba's Economy, Background Information from Manitoba Hydro to the Inter-Church Inquiry into Northern Hydro Development* (Winnipeg, Manitoba, June 21, 1999) at pp. 4-10 to 4-14.

⁶⁴ "The Committee...endorses the Recommendations of RCAP that policies which violate Aboriginal treaty obligations and the extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party." Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada. E/C.12/1/Add.31* (United Nations, 10/12/98) at para. 18.

⁶⁵ "The Committee notes that, as the State party acknowledged, the situation of the aboriginal peoples remains "the most pressing human rights issue facing Canadians". In this connection, the Committee is particularly concerned that the State party has not yet implemented the Recommendations of the Royal Commission on Aboriginal Peoples (RCAP). With reference to the conclusion by RCAP that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self-determination requires, inter alia, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP Recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant." Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada CCPR/C/79/Add.105* 07/04/99 at para. 8.

⁶⁶ Grey, John *Referendum process leaves a House divided* (The Globe and Mail, February 2, 1998) p. A3.

⁶⁷ "I received this summons, as did a number of people from Norway House Cree Nation, when we attempted to exercise our traditional right to freedom of speech. This right extends to the use of media facilities located in our Reserve. In this instance we were going to try to express our concerns over the local radio station. I had done a similar thing two weeks before. I wasn't arrested at that time, but then I was talking about different issues. This time around, the people who were there, including myself, were concerned about the lack of band meetings and no discussion on the Northern Flood Agreement negotiations as we knew them to be, because we hadn't seen this master

implementation agreement at that time." Gamblin, Merna, testimony, "An Act respecting an agreement with the Norway House Cree Nation for the settlement of matters arising from the flooding of lands, and respecting the establishment of certain reserves in the province of Manitoba," *Standing Committee on Aboriginal Affairs and Northern Development Evidence March 18, 1999* (Parliament of Canada, www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev57-e.htm, March 18, 1999).

⁶⁸ "People wanted money. They were told "If you want your money, sign the petition". Some petitions were blank, but they asked, "Do you want your money? It's right here. You can get your money." There was the suppression of any opposition. There were threats in 1995 at the meeting: "If you don't withdraw your name, or if your name appears on the court docket, perhaps you will not get your money, or you might be taken to court." In the time before the December meeting took place, we had 450 members plus their families. When it was announced that the people could be threatened, we lost 95% of our members" McKay, Leonard, testimony, "An Act respecting an agreement with the Norway House Cree Nation for the settlement of matters arising from the flooding of lands, and respecting the establishment of certain reserves in the province of Manitoba," *Standing Committee on Aboriginal Affairs and Northern Development Evidence March 18, 1999* (Parliament of Canada, www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev55-e.htm, March 16, 1999).

⁶⁹ "The Norway House band actually held a vote and the band council, I think in partnership with the department of Indian affairs, decided to hold a second vote on exactly the same agreement. Nothing had changed. The second allegation that was made was that the second vote was conducted, but not before a liberal amount of money was used to buy votes." Scott, Mike M.P., *House of Commons Debate* (Edited Hansard No. 160, at www.parl.gc.ca/36/1/parlbus/chambus/house/debates/160_1998-11-26/han160-e.htm#LINK198) November 26, 1998, and "In the light of the role of the federal government in this obviously undemocratic referendum process, how can it then turn around and try to give Quebec lessons on the democratic consultation of its people and the interpretation of the results? Obviously this sort of practice raises some questions. For example, what is the relationship between the federal government and the native peoples? Is vote buying common practice? Is this how the Minister of Indian Affairs consults the native peoples in this country? How can we trust the federal government in the future, when we know that the Department of Indian Affairs supported such an unjust operation?" Savoie, Pierre. M.P., *House of Commons Debate* (Edited Hansard No. 152, at www.parl.gc.ca/36/1/parlbus/chambus/house/debates/152_1998-11-16/han152-e.htm#LINK211) November 26, 1998.

⁷⁰ Chief Roland Robinson, *Broken promises litter northern Hydro treaty* (Winnipeg Free Press, July 14, 1998) p. A 11.

⁷¹ Niezen, Ronald, *Treaty Violations and the Hydro-Payment Rebellion of Cross Lake, Manitoba* Cultural Survival Quarterly Magazine (Cambridge, MA, Spring 1999) pp. 18-21.

⁷² Crate Kapapakoskew, Emma-Jane, *Reawakening of an Ancient Nation Thanks to the Northern Flood Agreement Including our First Treaty 5 as being lived by Pimicikamak Cree Nation*, Inter-Church Inquiry into Northern Hydro Development (Winnipeg, Manitoba, June 22, 1999). □

CANADA

SUBMISSION FROM

HYDRO-QUÉBEC

The Indigenous Nations in Québec

The Province of Québec covers an area of 1 625 000 km² equivalent to the combined land mass of Spain, France, Great-Britain and Germany. The Province has the largest freshwater area in Canada, covering 10% of its total surface. There are 130,000 rivers and half a million lakes.

Out of a total population of 7 million inhabitants, approximately 72 400 are indigenous people. Over ¾ of the indigenous people live within their original communities. There are 40 Amerindian and 14 Inuit communities throughout Québec, belonging to 10 Amerindian Nations and the Inuit Nation.

The term « Indigenous people » (« *Autochtone* ») refers in Québec to people of Amerindian and Inuit ancestry whose predecessors lived in Québec prior to colonisation by France in the early 17th century. Amerindians and Inuits are distinct linguistic and cultural nations.

By virtue of the Canadian Constitution, the indigenous people in Canada are under the jurisdiction of the Federal Parliament, for indigenous matters and to determine who is Indigenous under the Law.

Hydro-Québec

Hydro-Québec is a publicly owned company with a single shareholder, the Québec Government. It serves 3.5 million customers in Québec. In addition, it supplies power to 15 electric utilities in the North-Eastern United States, Ontario and New Brunswick. Its installed capacity is over 31.400 MW, of which 95% is hydroelectric. Its 1998 sales totalled 161 TWh, with Québec markets accounting for more than 88% and sales outside Québec for nearly 11.5%.

Hydro-Québec and First Nations

A significant proportion of hydropower generation in Québec and most of the remaining potential for development are located on sparsely inhabited land, often claimed and used by indigenous people who harvest its wildlife resources.

Beyond the fundamental land claim issues, which are in Canada under Federal jurisdiction, the main social issues associated to hydropower projects are essentially :

- consent by local people,
- economic development of communities and
- joint design and implementation of mitigation and compensation measures.

History - The Colonies, French and British

The present day Province of Québec originates from the French colony « *Nouvelle France* » established along the shores of the St-Lawrence river from the early 1600' onwards. France, under colonial rule, did not have as a custom to sign treaties with First Nations in order to establish the Colony. Rather, ad hoc and shifting political and trade alliances with indigenous communities were established during the early period of colonisation.

The treaty of Paris in 1763 which concluded the Seven Year War between France and England, transferred « *Nouvelle France* » to British sovereignty.

During the period of British sovereignty in Canada, the practice by the Crown was to sign treaties with First Nations, by which ancestral rights were extinguished in return for compensations and specific rights. Thus, from the beginning of colonisation until the turn of the 20th century, it has been a general practice in Canada, but not a systematic one, to sign treaties with First Nations

surrendering aboriginal title to their ancestral land. In Québec, this practice of signing treaties was not adopted, and consequently there are few treaties signed with First Nations in Québec.

In the 1960's, Governments thought that Indian rights, Indian status and treaties were things of the past. In a White Paper published in 1969, the Federal Department of Indian Affairs and Northern Development proposed to abolish the Indians status and have indigenous people join the mainstream of Canadian society. Indigenous organisations throughout Canada opposed this approach. On the contrary, they demanded the respect of past treaties and of their indigenous rights. In the Province of Québec there were at that time no treaties with indigenous people recognised as such.

Recent Past

Modern day treaties are now called « Comprehensive Land Claims Settlements », and the first one signed in Canada was triggered by the Québec Government's decision in 1971 to develop the James Bay hydropower projects.

James Bay Hydroelectric Development (1971)

The Premier of the Province of Québec at that time, Mr. Robert Bourassa, announced the James Bay hydroelectric development project in April 1971. The development of hydroelectric resources of Northern Québec raised the issue of the aboriginal rights and land claims for about 5,000 Crees, 3,500 Inuit and 400 Naskapi who lived in the James Bay and Northern Québec region in 1971, which covered an area of 1 million km². They strongly opposed to the project. It was the first time that Hydro-Québec and the Government of Québec had to specifically address indigenous rights and claims for a development project.

The first negotiations failed, and following court rulings and procedures which caused uncertainty for all parties, a new round of talks led to the signature of two Agreements: The James Bay and Northern Québec Agreement (JBNQA) in 1975 with the Cree and Inuit, followed by the Northeastern Québec Agreement (NQA) in 1978 with the Naskapi. These Agreements were signed by the Federal Government, the First Nations, the Québec Government, Hydro-Québec, the SEBJ and the SDBJ. Under these Agreements, the Crees, Inuit and Naskapis exchanged their ancestral rights for clear, defined rights, compensations land and other benefits.

The James Bay and Northern Québec Agreement (JBNQA) was the first modern day comprehensive land claim settlement in Canada. Since then, the Constitutional Law of 1982 recognised and confirmed existing rights -

ancestral or determined through treaties - of First Nations in Canada.

The provisions of the JBNQA cover 30 chapters. The Crees and Inuit gained financial compensation, land, income security program for hunters and specific rights in several areas such as local and regional autonomy, wildlife harvesting and pursuit of traditional activities, economic development, health, social service, education and environment protection.

The environmental and social protection regime established by the JBNQA grants the Crees and Inuit a leading role in the process of assessing the impacts of future projects. The facilities of the La Grande complex, the related mitigation and remedial measures and preferential provisions for project Employment and contracts are covered in chapter 8.

Hydropower Projects after James Bay

The JBNQA included three distinct watershed developments : The La Grande river, which was fully developed in 2 phases, with construction ending in 1996 ; The Grande Baleine river, which Hydro-Québec wanted to build, but was postponed indefinitely in 1994 due to changing commercial conditions in export markets and sustained opposition by the Cree, and the Nottaway-Broadback-Rupert complex which was not developed.

Following the JBNQA, and given the complexity of reaching integrated, multi-government treaties, Hydro-Québec and the First Nations modified their approach. Later projects were developed based on direct negotiations between the promoter (Hydro-Québec) and First Nations. Land claim issues are specifically excluded from such agreements. Federal and Provincial governments are not part of the negotiations or agreements.

Between 1978 and 1993, Hydro-Québec signed five new agreements with Québec Crees for additions and modifications to the La Grande Complex. Another one was reached with the Inuit for final remedial measures and compensation for the La Grande Complex.

These agreements are tailored to integrate community concerns into the design of facilities and to establish joint bodies for the development and implementation of environmental mitigation measures. Agreements focus on optimisation of economic benefits and spin-offs through training, hiring and awarding of contracts, as well as on compensation for residual impacts with funds that support economic and community development and traditional harvesting activities.

This approach, has been applied to others First Nations in Québec. Hydro-Québec has concluded four agreements with the Attikameks and the Montagnais (Innu). These agreements ensured their participation and

acceptance of projects and provided an assurance that no legal recourse will be taken against these projects on the basis of aboriginal land rights. Three of these agreements cover 735 kV transmission lines and the fourth concerns the Sainte-Marguerite III project (882 MW). These agreements include a technical description of the projects, mitigation and specific measures, a joint body to develop and undertake remedial measures, a liaison committee to insure proper communication between Hydro-Québec and local people and provisions for training, employment and contracts.

Although this approach has met with some success, changes in social values and expectations has led Hydro-Québec to propose a more ambitious type of agreement which could bring local communities - indigenous and non-indigenous - as part owners of the facilities.

Looking at the Future

Defining a Future Partnership

In its Strategic Plan for 1998-2002, Hydro-Québec states that any new development, besides being profitable, must be environmentally and socially acceptable, and will be undertaken in partnership with affected populations. We see revenue-sharing, agreement on environmental assessment study processes, capacity-building, long-term relations and achievement of trust and mutual respect as the main aspects of a partnership.

Hydro-Québec proposes that communities participate directly in project-related investment. Not only does the partnership approach address Hydro-Québec's business concerns, it also underscores the readiness of the indigenous communities not only to negotiate, but to pursue and enhance their own priorities in fields such as economic and social development.

Direct participation by indigenous peoples in the EIA study process is a major thrust for the future. Hydro-Québec and indigenous peoples must take the time required at the beginning of a project to reach agreement on the EIA study process and ensure mutual objectives are clearly set out. We want to find ways to adapt the study process to a partnership approach. Joint studies, joint committees and working groups are certainly interesting vehicles that can be used more extensively. We are looking to "joint environmental impact assessments".

The use of traditional knowledge is another component that needs to be better integrated within the EIA study process and indigenous peoples' participation should increase the effectiveness of mitigating and corrective measures.

Capacity-building is often a requirement for more effective participation. By "capacity-building" we mean the strengthening of indigenous peoples' institutions and technical knowledge to ensure that both parties are at level.

Transfer of knowledge should travel both ways in order to take into account indigenous communities, with proponents learning from indigenous peoples and indigenous peoples learning from the proponents. When values and ways of life cannot be shared, they can at the least be understood and respected by both parties. Achieving trust and mutual respect should be a main objective of industry. This is earned, not acquired.

Presently, such a partnership approach is being discussed for future projects between Hydro-Québec and both indigenous and non-indigenous communities. A first agreement in principle has been signed with Montagnais representatives of Betsiamites on June 21st, 1999 for the partial diversion of 3 rivers and the construction of a new powerplant of 440 MW.

Questions :

1. When looking at the relationship between dams and indigenous peoples, do you include the whole watershed/regional process and not just the dam itself?

The spatial definition is neither based on the watershed nor limited to the dam area.

It depends on the nature of the project, of the natural habitats and of the communities affected by it. For social assessment of dam projects and for compensation negotiations, we identify which communities could be affected by the project - through studies, information and consultation processes - and define the study area based on the spatial distribution of the activities by the affected communities.

For example, a reservoir project may affect indigenous communities with traditional hunting, gathering, fishing and trapping activities spread over large areas, beyond the watershed. The study area will then include these territories. The same applies to non-indigenous populations.

Regarding biophysical impacts, the study areas are determined by the ecosystems and habitats occupied by the flora/fauna. These may be localised, or may spread beyond the watershed.

2. Have you had experience of resistance to dams?

Yes. Most dam projects today in Québec generate some opposition, controversy and sometimes resistance, from both indigenous and non-indigenous sectors of society. This is also true for most infrastructure projects, such as new highways or new airports. These same projects also generate support from some sectors of society, sometimes within indigenous communities.

Large scale - and to some extent small scale - projects significantly modify the land use in and around the project. This land has economic and social uses, in addition to

political, emotional, symbolic and cultural meaning projected onto it, for indigenous and non-indigenous communities.

This resistance reflects the variety of opinions and interests that coexist in a society. The environmental review processes of Québec and Canada provide for extensive public hearings and consultations for the public to voice their concerns, support or opposition to projects.

The largest resistance the company has experienced was the Grande Baleine project (indefinitely postponed in 1994) where a coalition of the Cree Nation, environmental and Native rights groups from Canada and abroad lobbied governments, public opinion and interest groups. This resistance was one of the factors leading to the Québec government's decision to indefinitely postpone - a de facto cancelling - the project of Hydro-Québec, a crown corporation.

3. Do you have any observations on gender questions relating to indigenous peoples and large dams?

The gender question is not treated as a separate consideration in the social impact assessment studies for projects within Québec. It may be addressed within the general framework of such studies, on an *ad hoc* basis, similar to the way specific issues concerning the elderly, youth or other groups may be considered.

Compensation and benefits are negotiated with the political representatives of the First Nations. The indigenous communities, through their representatives, define their own social and economic priorities for investment of compensation funds. These priorities might raise gender-based questions, but these are beyond the role of Hydro-Québec.

Social Impact Assessments for international projects by Hydro-Québec International addresses gender issues specifically, in compliance with requirements and methodologies developed by multilateral and bilateral institutions, particularly the Canadian International Development Agency.

Further Reading : Grande Baleine Complex. 1993. Part 2, book 2, volume 3, section 4.1.3

4. What have indigenous peoples gained or lost from dam projects?

This question is best answered by indigenous peoples themselves. Gains and losses are value judgements, tailored by one's unique individual experience and cultural value-system.

There are two comments however we wish to make :

- first, to the extent that the negotiation process set up between Hydro-Québec and an indigenous community

is fair and follows due process, then *if an agreement is reached*, it means that the gains at least offset the losses for both the utility and the communities.

- secondly, communities are not monolithic, but rather dynamic and diverse groups, where various diverging opinions and values coexisting. What an indigenous community as a whole might gain (or lose) might differ from the perceptions of specific groups within these same communities : ex. the elderly, the trappers, the traditionalist movements within the communities, women or youth groups.

Further Reading :

- *The River, The Land, The Future. The Uashat mak Mani-Utenam Agreement on the Sainte-Marguerite Hydro Project. 1995. Presentation by Chief Élie-Jacques Jourdain.*
- *WCD Forum, Prague 1999. Presentation by the Cree representative at the Forum.*
- *Robert Lanari, Makivik. 1999.*
- *Simard, J-J et al. 1996. Tendances nordiques. Les changements sociaux 1970 - 1990 chez les Cris et les Inuit du Québec. Une enquête statistique exploratoire. GÉTIC, Université Laval, Québec. 253p.*

5. Were there any ways in which these losses were prevented, ameliorated or compensated to the satisfaction of the indigenous peoples and local communities?

Since the 70's, all projects include environmental/social mitigation measures and compensations. These mitigation measures may originate from :

- mandatory conditions in the Governments' decrees authorising the construction of the project,
- mitigation measures from the EA process,
- measures negotiated in the agreements with the local communities and,
- voluntary measures by Hydro-Québec such as the «Programme de mise en valeur intégré» (PMVI).

The PMVI dedicates 1 or 2% of the project's capital cost to social and environmental initiatives, above and beyond the mandatory measures mentioned above. This money is shared between the administrations of the affected communities, both indigenous and non-indigenous. The communities then decide on environmental and community enhancement projects financed by the Programme. To date, 325 communities have received 63 million dollars in PMVI funds, invested into 750 initiatives.

In the context of the La Grande project, the **Income Security Program** was designed to preserve the traditional

Cree way of life by providing assistance, including financial aid, to families and individuals who hunt on a more or less ongoing basis (at least 120 days a year.). In 1971, 600 families only were regularly involved in hunting, fishing and trapping activities. In the first half of the 1980s, the number of program beneficiary units increased to approximately 1200. All studies conducted show that the ISP program, which applies to the entire Cree population, has made it possible to preserve a way of life that appeared to be threatened, or at least slow down its decline, which started before the La Grande project was started. A similar program was negotiated with the Montagnais (Innu) for the recent Sainte-Marguerite-3 project.

The **SOTRAC** («*Société des travaux correcteurs*») is another collaborative effort in environmental and social mitigation. The SOTRAC are companies set up specifically to plan mitigation measures for indigenous communities during the construction of a hydropower plant. The unusual feature of SOTRAC is that half of the board of directors is composed of Hydro-Québec representatives and half of First Nation representatives. The board decides which measures to prioritise and allocates budgets accordingly. The measures are implemented by the community. The first SOTRAC was set up during the La Grande project, and since then several others were created.

For Sainte-Marguerite-3, the latest hydropower project under construction, SOTRAC (Sainte-Marguerite) has a budget of up to 10 million \$ for remedial works. SOTRAC (Sainte-Marguerite) has built up to now :

- snowmobile trails for Montagnais hunters and trappers,
- a chapel and facilities at the St-Anne Innu pilgrimage site,
- a Montagnais cultural centre in Uashat, which will exhibit the artefacts uncovered during the seven years of archaeological digs in the reservoir area,
- supported beaver trapping in the reservoir area,
- relocated a valued fish specie in a lake, etc.

The SOTRAC (Sainte-Marguerite) also manages the Innu Aitun Fund which provides hunters/trappers and their families with the equipment and goods required to practice their activities.

Further Reading :

- Hydro-Québec. 1994. Leaflet #10. « *La Grande Hydroelectric Complex. Mitigative Measures* ». 6p.
- Hydro-Québec. 1999. *Aménagement hydroélectrique Sainte-Marguerite-3. Bilan des activités environnementales. 1998.*
- Hydro-Québec. 1999. *Table 3 : Compensation and amounts allocated for remedial works by Hydro-Québec.* 1p.

6. To what extent do indigenous peoples and local communities participate in an informed way at all stages of dam projects?

The integration of indigenous and local community's concerns into project activities has evolved substantially over time. Half a century ago, their concerns were not integrated. Eventually, over time, information sessions were held, then consultations, and later direct participation in mitigation measures.

With the obligation over the last decades to perform full EA's, and hold public hearings for projects 10MW and over, information and consultation are mandatory steps in the planning and construction of projects. The public hearings influence the government's decision to licence or not the project, and guide the government in determining the conditions under which the project may be built.

The JBNQA set up joint committees for the environmental review processes of specific projects and for managing environmental matters on Convention land. All stakeholders are represented, Cree, Inuit and the various levels of government.

Today, with our new approach based on local consent and part ownership of the future projects, in order for projects to go ahead local communities must get involved at the earliest stages of project planning, the EA, construction and possibly have a say in project operations.

7. Do the concepts of consent and indigenous control over their own development play any part in your approaches? Please state clearly the criteria with which you define control and free informed consent?

Local consent is now a pre-condition for all future projects, from both indigenous and non-indigenous communities. Proposed projects are negotiated with community representatives, such as the Band Councils. If an agreement is reached, often the Band Council will submit the proposed agreement to the community, via a referendum. For example, the Uashat mak Mani-Utenam Agreement went through such a process, and was approved by a 52/48% margin. The recent Agreements with the Cree communities - such as the Opimiscow Agreement - are negotiated locally at the community level, but then must be approved by the Grand Council of the Crees.

Hydro-Québec cannot interfere in the local political process of reaching consent, and it is up to the communities to determine how they wish to address their constituents.

8. *What relationships do you have with national governments?*

Hydro-Québec is a public utility set up in 1944, fully owned by the government of the province of Québec. Its role is defined in the «Loi sur Hydro-Québec». It has a board of directors appointed by the Québec government, and is managed as an enterprise.

The relations with the federal government of Canada is a function of specific issues of federal jurisdiction: relations with First Nations, permits for electricity exports, or certain aspects of the environmental assessment process such as navigation or fisheries.

Further Reading :

- Hydro-Québec. 1999. *Annual Report 1998*

9. *Do dams provide any compensation and benefits?*

Definitely. Compensations and benefits are negotiated during the planning of hydropower projects and power lines by Hydro-Québec, with both indigenous and non-indigenous communities. These negotiations are separate, reflecting the different political, social and cultural contexts. A table enclosed gives an idea of the amounts allocated for remedial works over time.

The compensations are negotiated with the political representatives of the First Nations.

See question 5, above.

Further Reading :

- Hydro-Québec. 1999. *Table 3 : Compensation and amounts allocated for remedial works by Hydro-Québec*. 1p.
- *Sainte-Marguerite-3 Hydroelectric Development. Case Study No.2*. E7 Seminar on Social Trust and Public Confidence. Feb. 1998.
- *The Uashat mak Mani-Utenam Agreement*. 1994
- *The Opimiscow Agreement*. 1992
- *La Grande Hydroelectric Complex*. Hydro-Québec :
 - # 2. *The La Grande Complex Development and its Main Environmental Issues*. 1995.
 - # 3. *James Bay and Northern Québec Agreement and Subsequent Agreements*. 1996.
 - # 7. *Mercury and Hydroelectric Developments*. 1994.
 - # 10. *Mitigative Measures*. 1994.
 - # 11. *Regional Economic Spinoffs*. 1994.
 - # 14. *Economic and Social Development of the Aboriginal Communities*. 1996.

10. *Can you provide any examples of best practices in large dam construction?*

One example of good social practice could be our latest project under construction, Sainte-Marguerite-3.

Further Reading :

- *Sainte-Marguerite-3 Hydroelectric Development. Case Study No.2*. E7 Seminar on Social Trust and Public Confidence. Feb. 1998.
- Hydro-Québec is also participating in the International Energy Agency's «Hydropower Agreement» and a report on *Hydropower and the Environment* is being prepared outlining recommendations and criteria for improved hydropower projects. These recommendations cover both environmental and social considerations.

11. *Do you have any suggestions as to how large dam activities can be improved and the problems encountered could be solved or avoided?*

Our suggestion boils down to our latest approach :

- ensuring local consent at the outset of project planning (for both indigenous and non-indigenous communities) with revenue sharing if feasible,
- modifying the project in collaboration with community representatives, to ensure that local concerns are integrated,
- dropping the project if an agreement is not feasible,
- ensuring that the environment is protected,
- ensuring that the project is profitable.

Time will tell us whether this approach is reasonable and effective. Its applicability outside Québec might depend on specific local conditions.

Themes :

a) social and environmental impacts - do these relate to the studies carried out prior to the construction of a dam?

Following the impact studies, following the review of the EIA by the Ministry of Environment, after the public hearings and after the decree to build the project is issued by the government - Hydro-Québec proceeds with the project's construction. At this stage 3 sets of environmental/social activities are triggered :

1. *Environmental monitoring of construction activities*, ensuring that laws, regulations, ad hoc government decree conditions and our own Environmental Codes

are enforced. An environmental team at the site is responsible for this activity.

2. *Environmental/social follow-up studies.* These recurring scientific studies monitor the evolution of impacts, in order to: a) check whether the impact prognostics made during the EA were correct, b) guide the mitigation measures and c) check the effectiveness of mitigation measures. Consultants, academics and in-house specialists drawn from the 150+ environmental advisors within Hydro-Québec produce these studies.
3. *Environmental/social mitigation and compensation measures.* The EIA proposes a set of specific measures to mitigate or compensate environmental and social impacts. The government decree also imposes its own set of measures. The main activity once construction begins is to implement such measures, which may extend well beyond the construction period. The Uashat mak Mani-Utenam Agreement includes funds as compensation measures which extend over a period of 50 years. Measures are generally implemented in collaboration with local groups, including indigenous companies or organisations.

Further Reading :

- Hydro-Québec, 1999. *Aménagement Hydroélectrique Sainte-Marguerite-3. Bilan des Activités Environnementales 1998.*

b) displacement and involuntary resettlement

Involuntary resettlement is avoided.

The only significant case of displacement for a Hydro-Québec project was in the early 70's with the resettlement of Fort-George in the James Bay area. There were concerns at that time that the village located on an island of the La Grande estuary might be threatened by erosion due to the hydropower plants upstream. The community voted to resettle and a new village was built nearby. The threat never materialised and some families remained on the original site.

Apart from this case, the Hydro-Québec reservoirs might displace some seasonal hunting camps owned by indigenous and non-indigenous people. These are compensated and relocated. For the on-going Sainte-Marguerite project, a total of 22 camps were compensated, 9 in the reservoir area, 11 along the access road, and 2 downstream of the powerhouse. Most of these camps were owned by non-indigenous people.

Further Reading :

- Sénécal, P., Egré, D. 1999. *Human Impacts of the La Grande Hydroelectric Complex on Cree Communities.* English version to be published in IAPA, 03/2000.

- c) *equity questions both in relation to the political economy of the area and whether dams have any effect on poverty levels.*

Over the last decades, substantial material/financial compensations for local communities have accompanied Hydro-Québec's development projects, and this has certainly helped in achieving greater material comfort.

For example, the standard of living of the Cree in Québec has improved notably. However, the high rates of population growth is an issue which will require significant resources - training, jobs - in the near future. These communities are among the most prosperous First Nations in Canada, although precise evaluations are difficult to do, because of different fiscal rules or subsidies for indigenous communities, higher cost of living in the North, etc.

A quote from the Royal Commission on Aboriginal People summarises the situation:

«THE QUEBEC CREE of eastern James Bay signed the 1975 James Bay and Northern Quebec Agreement, a modern treaty. The Ontario Cree of western James Bay signed Treaty 9 in 1905-06. The former have improved their economic status. The eastern Cree have more land, more access to resources and more capital than their western neighbours. Although the eastern Cree have disputes with Quebec about the full extent of their rights, the western Cree would love to have their problems. The western Cree have only limited access to land and resources and no money for such creative initiatives as the eastern Cree's income security program for traditional harvesters.»
(Canada. Royal Commission on Aboriginal People. 1996. *People to People, Nation to Nation : Highlights from the report from the Royal Commission on Aboriginal Peoples.* Ottawa. p.41-42)

The distribution of such wealth is another matter altogether, in good part the responsibility of the local and/or regional indigenous governments. The JBNQA has certainly provided the Cree, Inuit and Naskapi Nations a control over their destiny and territory.

Some authors have addressed or mentioned these issues :

- Royal Commission on Aboriginal People.
- Salisbury, Richard F. 1986 . *A Homeland for the Cree. Regional Development in James Bay 1971-1981.* McGill-Queen's University Press. 172p.
- Simard, J-J et al. 1996. *Tendances nordiques. Les changements sociaux 1970 - 1990 chez les Cris et les Inuit du Québec. Une enquête statistique exploratoire.* GÉTIC, Université Laval, Québec. 253p.
- Sénécal, P., Egré, D. 1999. *Human Impacts of the La Grande Hydroelectric Complex on Cree Communities.* English version to be published in IAPA, 03/2000. □

INTER AMERICAN DEVELOPMENT BANK

INDIGENOUS PEOPLES AND COMMUNITY DEVELOPMENT UNIT

SDS/IND/13.99

July 2nd, 1999

Mr. Achim Steiner
Secretary General
World Commission on Dams
Fax (27 21) 426 0036
Cape Town, South Africa

Dear Mr. Steiner:

In reference to your letter of May 26th to Mr. Walter Arensberg, I am pleased to provide you with the following information which I hope will be of use in preparing the review on "Dams, Indigenous Peoples and Ethnic Minorities." Rather than preparing a specific reply to each of the issues raised in your scoping paper and in the outline prepared by the Forest Peoples Programme, I would like to provide you with a list of the relevant policy documents and operational guidelines which the Inter-American Development Bank has developed to orient Bank staff, borrowing agencies and stakeholders on issues regarding the impact of dams. I am forwarding the respective documents under separate cover to both Dr. Marcus Colchester and to yourself.

The first formal treatment of involuntary resettlement issues came in 1982 when the Operations Evaluations Office commissioned a series of ex-post evaluation studies of hydro-electric power projects in six countries. The findings and recommendations of these studies are summarized in document GN-1551 of December 1995, which I attach. Partly as a result of these assessments, in 1984 socio-cultural checklists for a broad range of Bank projects, including hydropower dams, were issued. The checklist for the energy sector specifically refers to tribal peoples. I annex the relevant pages of these checklists.

With the creation in 1990 of the Environment Division as well as an interdepartmental Environment Committee (CMA) to screen all new Bank projects on their potential environmental impacts, two types of social impacts, namely involuntary resettlement and impacts on indigenous peoples, were included in the mandate of both entities. In that same year, the CMA issued a document: "Strategies and Procedures on Socio-Cultural Issues as related to the Environment" with specific chapters both on resettlement and on tribal peoples (copy attached).

As of 1991, draft "Operational guidelines on involuntary resettlement" have been in use and were periodically updated. These guidelines which have been issued in English, Spanish and Portuguese, have been widely used by bank staff and borrowers alike. I attach a copy of the latest version in English. We are currently revising the latest draft in order to assure consistency with Operational Policy 710 which was approved by the IDB's Board of Directors in July of 1998 and to further expand on methodological issues and good practices.

In light of the specific mandates on involuntary resettlement and on indigenous groups contained in the 1994 "Report on the Eighth General Increase in the Resources of the Inter-American Development Bank", a separate "Indigenous Peoples and Community Development Unit" was created that same year to be the Bank's focal point on indigenous issues, involuntary resettlement, community participation and socio-cultural soundness, and with responsibilities in the areas of policy definition, quality control of projects, and specialized technical advice to project teams. Building on the earlier documents and on a comprehensive review of all 120 projects approved since 1970 that involved involuntary resettlement, the Unit prepared the Involuntary Resettlement Policy (Operational Policy 710) which after a broad consultation process was approved in 1998. This operational policy and its background paper, which includes a summary of findings from the review of operations, is attached. Both the operational policy itself, as well as the background paper have specific paragraphs on indigenous communities, making the requirements regarding avoidance and full mitigation a lot stricter should resettlement involve indigenous people.

As far as specific projects is concerned, we have researched our database and extracted a summary of the relevant projects. Of the 120 projects currently included in the database of projects with involuntary resettlement components, we have identified only two operations approved since 1970 that have had indigenous people among those affected by resettlement. Unfortunately, both of these projects have been especially complicated and are considered worse case scenarios. However, in both cases, the IDB has undertaken measures to correct mistakes made during the earlier stages, by providing additional financing and insisting on compliance with international standards and the Bank's own 1990 operational procedures on resettlement. I provide a brief description of these projects:

- **Río Chixoy Hydropower project in Guatemala.** This project, approved in 1975 and co-financed with the World Bank, was part of the ex-post evaluations carried out in the early 80s. Its resettlement component was poorly planned without community consultation. The plan also seriously underestimated the number of families, all Maya-Quiché, to be relocated. Instead of 200 the actual number of resettled families was 650. The plan did not consider economic rehabilitation measures. Several archaeological sites were permanently lost. Problems with sedimentation of the reservoir and the need to correct the severe mistakes and shortcomings of the hydropower project, prompted the Bank to approve in 1992 a new operation for watershed management and community development in the Chixoy area, which is still in execution. Progress reports indicate that this project is very successful and has been characterized by strong community participation.
- **Yacyretá Hydropower project on the Paraná river between Argentina and Paraguay.** The first loan for this megaproject jointly financed by the IDB and the World Bank was approved in 1978. A total of close to 7,000 families will be resettled if the reservoir will be filled as originally planned. The 130 Guaraní Indians had already been resettled prior to IDB involvement. In 1993, given the magnitude of the resettlement and failure of the Argentine govern-

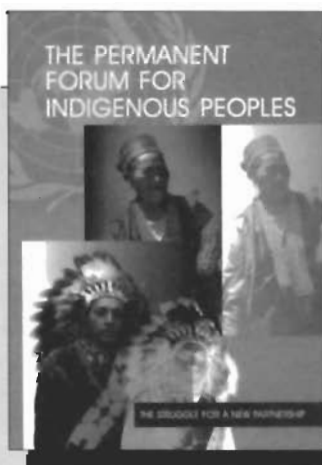
ment to comply with its obligations regarding resettlement, the IDB provided a loan to exclusively deal with the resettlement and environmental impact mitigation components. This operation also included a specific component to address the economic needs of the resettled Guaraní families, an aspect that had not been adequately dealt with before. This highly complex and controversial operation is still in execution. It was the first operation to be brought before the IDB's inspection panel.

I hope this information meets your needs. Please do not hesitate to contact me should you require any further assistance.

Finally, I would like to express to you my sincere condolences on the tragic and untimely death of Dr. Andrew Gray, whom I came to know and highly respect whenever our paths crossed during the many years of working with indigenous peoples. His passing away must, I am sure, make your task that much more difficult.

I wish you the best with this important project,

Anne Deruyttere, Chief
Indigenous Peoples and Community
Development Unit



THE PERMANENT FORUM FOR INDIGENOUS PEOPLES

The struggle for a new partnership

Edited by Lola García Alix

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5 July, 1999

Dr. Marcus Colchester, Director
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England, U.K.
Reference : Your letter, 4 May 1999

**Objet : World Commission on Dams
Thematic Review
«Dams, Indigenous Peoples
and Ethnic Minorities»
Submission By Hydro-Québec**

Dear Dr. Colchester,

First of all, we wish to thank you for the opportunity to present a submission to the World Commission on Dams' thematic review for which your organisation is responsible. As an electric utility, we certainly appreciate the possibility of expressing our views and experience regarding such a crucial issue.

The relation between dam promoters and indigenous people is certainly one of the major social issue facing this industry around the world. Dams and reservoirs often significantly modify land-use patterns in their area of influence. Access roads or irrigation projects built with the dam may become major axis for further land use transformation bringing logging activities, mining, agriculture and new human settlements, particularly in tropical countries. This may create substantial and unequal competition for resources between indigenous people and new settlers. In the most tragic cases, when no care has been taken to ensure the protection of indigenous cultures and fundamental rights, this encroachment of traditional lands and ways of life destroys entire cultures, families and individuals. But evidently, in your position, you are well aware of such problems.

Jean-Étienne Klimpt, Director
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Dams, of course, are not the only or even the major cause of land-use changes. Roads, agricultural projects, national resettlement programs, are large scale diffused changes in land-use, often involving millions of people which colonise entire territories over a period of a generation or two. Public policy over infrastructure and rural development is then a key element in such a context. Public policies reflect public perceptions: perceptions regarding ethnic minorities, perception over "under developed" territories, and so on.

The largest land use change over the last 50 years is certainly the shift in population distribution, from rural to urban areas. The growing megalopolis in southern countries impose tremendous stress on the supply of fundamental services : water, electricity, sewerage, etc. Dams often provide an essential service for such needs. One characteristic of large dams is that they are long lasting - 50, 100 years or more. Their planning also is time consuming: A decade or two may pass before construction begins. These are multigenerational infrastructures. Their long lead-time might sometimes be an advantage from a social perspective: If the will is present, it gives time to properly study the effects of such projects including the impacts of development caused by access roads, adapt the project to the local needs, and negotiate acceptable agreements with the concerned communities.

Time, however, is being compressed. The worldwide restructuring in the electricity sector now being implemented with a market approach to electricity supply, favours low capital cost production alternatives which are planned and built rapidly. A gas turbine powerplant is online in a few years; A hydropower project requires a few decades. For this reason, hydropower might be at a significant disadvantage in the future, as markets try to minimise uncertainty and risks. The longer the project, the greater the risk. The challenge is to shorten the hydropower project cycle, while adopting a participatory approach with local populations.

A second characteristic of dams is that they are relatively localised - except for the access roads - directly affecting a specific territory and stretch of a river. This may also be an advantage compared to diffuse land-use transformations such as highways or agricultural settlements: As a geographically circumscribe infrastructure, it is relatively simple to determine who will be affected by it, and therefore determine specific measures for the communities.

The Amazon basin is a case in point: Dramatic confrontations between indigenous people and mainstream society have occurred with the opening up of this territory to commercial activities. The highways, resettlement projects, agricultural development, mines, hydro development all caused very real tensions and hardships for indigenous people. Interestingly, the two major dams in the area - the very controversial Balbina, but also the Tucuruí project seem to have resulted in agreements with the affected indigenous communities which are great improvement when compared to the contact situation elsewhere in the Amazon. A Brazilian NGO defending indigenous rights - the DÍA¹ - refers to the human / cultural conditions of the Waimirí-Atroari communities following the agreement reached with the Balbina project as a most successful example in the Brazilian Amazon. This is second-hand information which should be checked, but if true, it would show that dams may not automatically generate social disasters, even for extremely vulnerable communities². The key issue here might not be building the dam per se, but the willingness and perceptions of decision-makers to respect and promote the rights of minorities.

Back to Hydro-Québec. This Government-owned utility has been building large dams in Québec for half a century³. The relations between the utility and First Nations reflect the general attitudes of society over this period, from ignoring such issues in the 50's and 60's to proposals today of full partnership with local communities, for new projects. Interestingly, because dams are long-term infrastructures, we must still today address social issues raised by dams built two generations ago. In this submission, we have tried to briefly outline our past experience and our newest strategies, trying to give sense of how our relations with indigenous and non-indigenous communities as a whole are evolving.

Our policy today may be summarised by three criteria. New projects will be built only if they satisfy all three criteria below:⁴

- Environmentally acceptable,
- Socially accepted,
- Profitable.

On the social side, this means that there must be significant local consent from indigenous and non indigenous communities alike for the project, for it to go ahead. This is a major shift in policy inasmuch as it clearly puts environmental and social considerations on equal footing with economic ones. The tool we think that will help increase local support is sharing ownership and revenues from the future facilities with local communities.

A first Agreement under these new rules has been signed June 21st, 1999 with the Montagnais, or Innu Band Council of Betsiamites on the Lower North Shore of the St-Lawrence⁵. The Betsiamites Band Council will submit this Agreement in the coming weeks to a community referendum before it may be implemented. In addition, six other agreements must be reached with both indigenous and non-indigenous communities for the project to go ahead.

Is such an approach of local consent applicable elsewhere in the world? We think that the Québec context for hydropower development has 3 specific characteristics which allows us to take such a tack.

Firstly, we have choices. There are many sites which are both profitable and probably environmentally acceptable for future development. If local communities reject a project, we probably can build another one elsewhere.

Secondly, there are other alternatives for electricity production: Québec has ample access to natural gas networks. If hydropower becomes unfeasible, we can burn gas instead. From an environmental view point this would be a setback, as a renewable source of electricity would be replaced by fossil fuel combustion. Gas is the cleanest of fossil fuels, but it still generates pollutant and, in temperate areas, about 30 times more greenhouse gases (GHG) than the equivalent hydropower production. It would be a trade-off between the local impacts of hydropower against the global impacts of GHGs and air quality.

Thirdly, there is no particular urgency in developing new facilities in Québec, when compared to less developed economies. Bolivia, Cambodia, Tanzania, to name only a few examples must provide their rural and urban populations elementary services, many of which depend on electricity. In Québec, as in any other developed economy, we have the luxury of completed infrastructure and universal public services. The public service is and has been rendered.

In countries where only one or limited sites are available for hydropower development and water supply, where needs are pressing, where electricity production alternatives are few, the approach of local consent to new projects takes another dimension. In some cases,

giving a "veto" power to local communities on projects that may provide essential public services to millions raises a fundamental ethical dilemma: The balance between minority and majority rights. Such "veto" power might even backfire against local communities raising resentment and social tensions as the majority may feel hostage to the decision of a few. This is not to say that projects of national importance should be rammed through at the expense of local communities: We have seen enough of such justifications around the world over the last generations, with disastrous consequences on local communities and the environment alike. We simply are pointing out a difficult ethical issue which projects might raise in less developed economies.

Ultimately, it might not be the dam as such which is important socially, but its use. Who will benefit from the electricity (or irrigation, or water supply)? What purpose is the project serving? Who benefits, who loses? Again, we return to policy issues.

We have taken advantage of this letter to present at a very general level our views on the subject. Our submission, enclosed, focuses on the specific aspects of the relations between Hydro-Québec and Indigenous people.

The submission is structured in two parts:

An introduction which covers the four basic points in your questionnaire. The introduction is followed by specific answers to the 14 questions asked. The submission refers to documents, brochures, maps, articles, which might help give you a more in-depth understanding of a particular subject.

We hope this submission clarifies some points, and will help your work by providing some ideas on the subject.

Please do not hesitate to contact us for further information or clarifications.

Best regards,

Jean-Étienne Klimpt

Director - Environment
Hydro-Québec

Notes

- ¹ DÍA. Documentação Indigenista e Ambiental. Website: www.crdi.rnp.br
- ² Whatever the merits or shortcomings of Balbina, it is interesting that a project that has generated very significant environment impacts, seems at the same time to have succeeded in addressing the difficult social/cultural issues which it faced.
- ³ Hydro-Québec was founded in 1944
- ⁴ See: Article in *The Nation*, interview with Hydro-Québec's CEO, André Caillé. 1998.
- ⁵ See: *The Pesamit Agreement*. 1999.



SAAMI PARLIAMENTARY CO-OPERATION AN ANALYSIS

By John B. Henriksen

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