

**Concept Paper for Bank Support to Pre-Qualification of
Oil and Gas Exploration/Production Blocks Andean/
Amazon Basin Countries**

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This working paper is being published with the sole objective of contributing to the debate on a topic of importance to the region, and to elicit comments and suggestions from interested parties. This paper has not gone through the Department's peer review process or undergone consideration by the SDS Management Team. As such, it does not reflect the official position of the Inter-American Development Bank. Please direct your comments to Carlos Perafán carlospe@iadb.org

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EXECUTIVE SUMMARY

Sector

Social Investment and Environmental

Project Type

Concept Paper¹ (the “Initiative”) to strengthen the ability of the hydrocarbon/energy ministry and other government institutions in charge of land tenure, cultural assessment, indigenous affairs and environmental control, to carry out **consultations with indigenous peoples prior to calls for bids on oil and gas exploration/development blocks** and to engage in socio-cultural, environmental and other secondary activities.

Initiative to improve conditions for indigenous peoples and to strengthen the capacity and participation of indigenous organizations and peoples in their consultations and in policies on resource management and development.

Objectives

The primary objective of this Initiative is to establish formal, effective and meaningful processes of consultation between Andean/Amazon Basin² country governments and indigenous peoples³, prior to government calls for bids on oil and gas exploration/development blocks. A secondary objective which may follow from the primary objective is to provide financial mechanisms to address indigenous concerns over land and resource development, including environmental frameworks to address the potential impacts of oil and gas activities on indigenous lands and traditional territories. While both objectives are important, **THE PRIORITY OF THIS PROGRAM IS THE JOINT DEVELOPMENT, BETWEEN INDIGENOUS PEOPLES AND GOVERNMENTS, OF METHODS OF CONSULTATION FOR HYDROCARBON ACTIVITY. INDIGENOUS PARTICIPATION AT ALL STAGES OF CONSULTATION IS THE FUNDAMENTAL BASIS OF THIS PROGRAM.**

Description

The Initiative has two aspects:

1. the first seeks to establish processes of consultation between governments and indigenous peoples with a view to arriving at a **specific framework agreement on prior consultation** so as to minimize situations of conflict when governments call for bids on oil and gas blocks or when oil and gas companies undertake exploration and development operations. Where a consultation process already exists in a country, the goal is to review and improve definitions, institutional

¹ This document presents a concept which, if accepted by the Bank as a method of proceeding, may lead to development of specific country operations and proposals.

² The Andean/Amazon Basin countries are Bolivia, Ecuador, Venezuela, Colombia, Chile, Peru and Brazil.

³ Under existing international law, there is no universal definition of the term “indigenous peoples”. A frequently quoted definition is the UN one. Additionally within national constitutions, statutes and other legislation, countries may provide a preliminary basis for identifying indigenous peoples. See Appendix 1 for some international definitions.

strengthening, guidelines or regulations for consultation. In other words, the intention is to assist governments in improving what they are already doing on consultation or providing them with the financial resources to permit them to carry out what they would like to do but have no funds for.

2. The second aspect is the **application of the consultation processes to activities** that governments may choose to engage in that will provide mutual benefit for indigenous peoples, other communities, and governments.

The Initiative contemplates a flexible approach to borrowing countries. Since Andean/Amazon Basin countries are at different stages of progress in their dealings with indigenous peoples and environmental issues and since laws and political situations are different, it is proposed that borrowing countries have flexibility, particularly where they choose to carry out the second aspect of this Initiative. An ideal list of activities (i.e. a checklist) that borrowing countries could choose to engage in under this Initiative, is set out in section VI. C and called the “Activities Component”. Four out of the seven activities are a first priority for the purposes of this Initiative. They are:

1. institutional strengthening;
2. capacity-building for indigenous representatives;
3. conduct of a consultation process with indigenous peoples and ethnic groups; and
4. design and implementation of preliminary socio-cultural and environmental baseline studies.

The conduct of the first priority activities may open up opportunities for governments to carry out other desirable activities in areas of:

1. regularization of land tenure;
2. preparation of indigenous community development plans or community plans from other populations; and
3. proposals for indigenous participation and community investment mechanisms or proposals from other populations.

The foregoing three areas of activities constitute the second aspect of this Initiative.

The level of funding that can be provided to any particular borrowing country will, accordingly, vary depending upon the number and nature of activities a country commits to engage in and the thresholds established by the Bank under its financing instruments. Flexibility will permit the countries to make progress in indigenous and environmental matters at a pace and in a manner that recognizes financial and political constraints and their own efforts to date.

The Initiative suggests that governments may wish to explore opportunities whereby the costs of this Initiative can be defrayed through a repayment mechanism linked to oil and gas contracts or concessions granted to companies. The rationale for this is that governments may be hesitant to add to their debt loads by seeking financing for activities under this Initiative no matter how desirable those activities may be.

The activities listed in the Activities Component may benefit oil and gas companies involved in bidding on oil and gas blocks in the region, particularly if a definitive agreement on prior consultation is attained between governments and indigenous peoples. The value of the blocks may be enhanced. Companies may thus be prepared to offer better terms as part of their arrangements with host governments if risk of confrontations with indigenous peoples and project interruptions are minimized as a result of this Initiative.

The Andean/Amazon Basin countries have different legal, regulatory, fiscal and operating arrangements in place that compensate host governments when oil and gas companies undertake exploration and development. It may be advisable to obtain the views of an oil and gas economist experienced with regimes in Latin America on the issue of possible government cost-recovery mechanisms. The comments of oil and gas companies should be obtained as the issues are complex and require expert financial assistance and experience.

IDB's Strategy

The Initiative is consistent with the IDB's strategy of addressing indigenous peoples' concerns through its operational activities. An increased number of projects, approved by the Bank in 1994 have promoted access to services by indigenous communities in socio-culturally appropriate ways. The Bank's Indigenous Peoples and Community Development Unit's focus is on poverty reduction and social equity as it affects indigenous populations. This Initiative would facilitate the ability of governments to address indigenous peoples' concerns in the Bank's operations. It would also improve conditions for indigenous peoples in the Andean/Amazon Basin countries.

International Dimensions

This Initiative would assist Andean/Amazon Basin countries adhere to international and national norms for the protection and advancement of indigenous peoples.

There are a number of treaties, conventions and declarations that establish international principles and norms for human rights pertaining to minority groups, including indigenous peoples. They address the right of indigenous peoples to participation and consultation on development projects that affect them as well as social security, health, human development and the environment. *ILO Convention 169*, the most significant instrument addressing the rights of indigenous peoples is widely known and codified as specific legislation and/or incorporated into the new national constitutions of a number of Latin American countries. However, its provisions, particularly as they relate to "prior" consultation, remain to be fully implemented in most countries, thereby creating a situation of unfulfilled expectations.

The United Nations General Assembly which proclaimed the decade of the World's indigenous peoples in 1993 appealed to financial and development institutions to increase their efforts to take into special account the needs of indigenous peoples in their budgeting and in programming. Bank acceptance of this Initiative would be responsive to this appeal and consistent with the theme of the decade "Indigenous People: Partnership in Action".

Recommendations

To encourage Andean/Amazon Basin Countries to move to the next step of planning on this concept paper and ultimately to submit a proposal for financing to the Bank under this Program and to encourage Indigenous Peoples' participating in the Program, the following is strongly recommended:

1. the input or approval of Andean/Amazon country ministers of finance or energy be obtained on this concept paper;
2. letters of interest be solicited from indigenous organizations and country ministers of finance or energy; and
3. input on this concept paper be obtained from IDB country officers.

Benefits and Risks

Indigenous peoples, some of the Andean/Amazon Basin's poorest and most vulnerable groups, stand to be the main beneficiaries of this Initiative. They will be involved in dialogue with governments for a better, coordinated approach to consultation and development in respect of natural resources on their lands or in traditional territories. In addition, the certainty offered by the prospect of a negotiated agreement on consultation between government and indigenous organizations will strengthen the confidence of foreign and domestic investors and ultimately, the development needs of the countries.

The main risk associated with this Initiative is that countries facing significant existing debt load may be reluctant to ultimately submit proposals for this Initiative. A second risk is if countries are not fully supportive of this Initiative, or if agreement on consultation is not achieved, there is a risk of creating undue expectations which may not be fulfilled. That could aggravate existing situations. Risk can be minimized through a flexible approach which allows the countries, in consultation and collaboration with indigenous organizations and other communities, to select and prioritize activities. It can be minimized by a well structured, inclusive approach to consultation and institutional strengthening, capacity building with indigenous peoples. The value to the Initiative is that the most important activities, consultation and inclusion of indigenous peoples in resource development planning and environmental protection, will be advanced.

I. INTRODUCTION

Lands and natural resources in areas inhabited by indigenous peoples or claimed as traditional domains are increasingly being explored and developed by oil and gas companies. The development of these resources is often seen as an important way to generate much-needed revenues for governments, to improve living standards and contribute to economic growth and prosperity. However, resource development activities such as seismic work, drilling operations, development and exploitation through to final abandonment, can have a significant, often negative impact on human communities and the natural environment. Conversely, activities can also increase access to funds to finance community based projects. Revenues can also improve conservation and environmental protection and ultimately promote sustainable development.

Andean/Amazon Basin countries are increasingly recognizing the importance of international and national laws and norms for the protection of indigenous peoples, and protection of the environment. This Initiative can assist them in developing guidelines, processes and methodologies to better clarify existing laws and to adhere to international and national legal instruments. For further background details, see Appendix II.

A. The IDB Initiative

This document presents a concept paper, intended to assist the Andean/Amazon Basin countries to develop proposals, in consultation with indigenous organizations, to be submitted to the Inter-American Development Bank (the "Bank") for:

1. the financing of consultations with indigenous peoples and;
2. the undertaking of a series of environmental, and socio-cultural activities prior to the governments' calls for bids on oil and gas exploration/development blocks.

Although the Initiative is restricted to the hydrocarbon sector, it can be applied more broadly to bids on other similar activities such as mining and forestry resource concessions. Accordingly, it can be seen as a model for other activities and government ministries.

Borrowing countries will have a good deal of flexibility to choose the activities they consider appropriate for financing under this Initiative. It is an opportunity for countries to improve their own consultation processes and programs in the field. A Bank Activities Component list or checklist sets out a series of desirable activities. Some activities are considered a first priority. The others are secondary activities that governments may eventually wish to engage in. Borrowing countries will be free to pick any of the activities they wish to engage in.

This Initiative suggests that borrowing countries may wish to explore opportunities to help defray all, or a portion of the costs of this Initiative through a repayment mechanism from oil and gas companies. Expert advice on this issue can be sought from oil and gas companies and an oil and gas economist. The Bank may be able to assist borrowing countries who wish to pursue this idea.

While governments will initiate the activities under this Initiative it is expected that indigenous participation will be sought at all stages of this Initiative. Numerous activities are noted in the Bank's Activities Component list, however, the key PRIORITY is the establishment or improvement of

consultation methods between indigenous peoples and governments. If accepted, this Initiative can be financed through the Bank's technical cooperation or financing instruments, to be decided upon on a case by case basis with individual countries.

II. BACKGROUND CONTEXT

A. Origins of this Initiative

In 1997 the "Dialogues on Oil in Fragile Environments" was convened and coordinated by the Program on Nonviolent Sanctions and Cultural Survival (PONSACS) of the Weatherhead Centre for International Affairs, Harvard University. They were initiated as a means to consider, in an impartial facilitated setting, the highly sensitive and frequently controversial issues surrounding oil development in the Upper Amazon Basin. Various stakeholders, including major indigenous organizations, environmental NGOs and transnational oil companies participated in the Dialogues. They met periodically to discuss themes proposed by the participants relevant to social impact mitigation. The focused region was Latin America. No formal deliverable outcome was expected from this group; only a sharing of knowledge and influence in other forums. In March, 2000 PONSACS prepared a report on the Dialogues.

In or about 1998, the Oil and Gas Unit of the World Bank established a group of national coordinators from 11 countries sharing the Sub-Andean Basin. The group met a number of times, mainly at OLADE (Latin American Energy Organization) headquarters in Quito. The group arranged to carry out a comparative assessment of the legal, regulatory, institutional and contractual frameworks existing in the region and committed to implement a work program including, the development of an information system, improvement of regulations, the start up of dialogue with industry and indigenous peoples' representatives and training and institutional build-up. To implement this work program, the group received support from the Corporation Andina de Fomento, IDB and the German Carl Duisberg Foundation.

During the course of the meetings of the national coordinators in 1999 the coordinators discussed the need to obtain financing to continue the work on information databases, guidelines for environmental and social impacts and education and training. Through the course of those discussions, IDB representatives suggested that one means of accomplishing that would be for the IDB to provide financing in the Amazon/Andean Basin region that ministers in the different countries could draw on to fund this work.

Further meetings of the national coordinators were held; the first in Quito in 1998. IDB's idea was further discussed. A decision was made to organize a second OLADE/World Bank meeting, called "Tripartite Meeting Environmental & Social Considerations for Hydrocarbon Activities in Fragile Areas of the Sub-Andean Basin". The participation of indigenous organizations and individuals, oil and gas companies and hydrocarbon coordinators from the Andean/Amazon Basin region was invited. That meeting was held in Cartagena on June 7, 8, 9, 2000. During the course of that meeting a representative of the IDB's Indigenous Peoples' and Community Development Unit and a consultant retained by the IDB outlined a concept for IDB support for consultation with indigenous peoples and for environmental, socio-cultural activities in the Andean/Amazon Basin countries. The presentation was well received. Considerable interest in the concept was shown by indigenous organizations and hydrocarbon representatives from the region. Participants included key indigenous representatives such as COICA, CIDOB, OIS, and CONAP. PONSACS, and the World Bank as well as representatives from OLADE

and the Carl Duisberg Foundation. Oil company representatives included Eco petrol, the Bolivian national oil company YPF, Exxon Mobil, Chevron, Occidental, Petrobras and BP Amoco.

In addition to the foregoing, individual initiatives by oil and gas companies on the subject of consultation and engagement with indigenous peoples and environmental impact mitigation have proven to be a success and received praise from NGOs and indigenous communities. The Camisea Gas Project in Peru is one example. Although Shell was not able to reach a final agreement with the Peruvian authorities on the project and withdrew in July 1998, the lessons learned from that project have been widely published. This type of community program demonstrates the evolving and positive relationship that can be developed between indigenous peoples, other communities and oil and gas companies.

The challenge is that all of these initiatives require substantial financing if they are to be carried out properly. Accordingly, this concept paper for IDB support is timely and in demand in a number of the Andean/Amazon Basin countries.

B. Oil and Gas Development and Indigenous Peoples

Latin American energy demands and corresponding capital investment requirements are huge. Investment is needed for oil and gas production, natural gas and oil pipeline infrastructure, power generation, transmission, distribution and environmental control technologies. However, such investments are often impeded by conflicts with indigenous peoples. Governments are increasingly recognizing the importance of indigenous prior consultation and participation in resource development on indigenous lands or traditional territories. Indigenous demands in this regard are supported by numerous NGOs as well as by a number of international conventions and norms that recognize the rights of indigenous peoples to consultation and participation in the use, management and conservation of natural resources. Most significant among these is the *International Labour Organization Convention 169* (“ILO 169”). However, its provisions remain poorly defined and have caused unfulfilled expectations and conflict.

III. INTERNATIONAL AND NATIONAL LAWS AND NORMS

The international community is increasingly signaling the importance of the rights of indigenous peoples and of the environment. This is shown through conventions and declarations which not only provide a broad framework of human rights, but also contain specific statements regarding the protection of indigenous peoples, their cultures, ways of life and development and right to a safe and healthy environment. Some Andean/Amazon Basin countries have similarly recognized that importance by amending their constitutions to recognize indigenous rights. Despite these advances, implementation has proven difficult. Obstacles include national policy and legislative frameworks, inadequate institutional and financial capacity to effect needed changes, inadequate capacity on the part of indigenous peoples, paternalistic attitudes as well as conditions of general social unrest. Illustrated below are the most significant international instruments:

A. Key Conventions and Declarations

1. 1957 International Labour Organization Convention on Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (“ILO 107”);
2. United Nations Universal Declaration of Human Rights (1948) and International Covenant on Civil and Political Rights (1966);
3. United Nations 1993 Draft Declaration on the Rights of Indigenous Peoples;
4. International Covenant on the Rights of Indigenous Nations, 1994;
5. International Labour Organization Convention 169 (“ILO 169”);
6. United Nations Agenda No. 21;
7. Inter-American Proposed Declaration of the Rights of Indigenous Peoples⁴.

The conventions and declarations collectively spell out indigenous peoples’ right to consultation, to participation in development plans and to economic, social, environmental and cultural well-being. Any program approved by the Bank must be mindful of these instruments and the plea contained in some of them, for international financial institutions to advance recognition of the rights of indigenous peoples in their programs.

ILO 169 includes articles that deal with consultation and participation, social security and health, human development and the environment. ILO 169 is widely known and codified as specific legislation and/or incorporated into the new national constitutions of a number of Latin American countries. Most Latin American representatives to the ILO have signed this instrument. Fourteen countries have ratified the Convention, including, Bolivia, Colombia, Ecuador and Peru. However, its provisions, particularly as they relate to “prior consultation”, remain to be fully implemented in most countries.

The *proposed Inter-American Declaration of the Rights of Indigenous Peoples* is the most recent and comprehensive document concerning the rights of indigenous peoples. Although it is proposed as a declaration (which has less force than a convention) it can be expected to be very persuasive, if adopted by the Organization of American States. For further details on the conventions, declarations and the Decade of the World’s Indigenous Peoples, see Appendix III.

IV. INSTANCES OF CONFLICT IN RESOURCE DEVELOPMENT

Oil and gas exploration and development in the Andean/Amazon Basin region often proceed without any meaningful consultation with affected indigenous peoples. Although a number of governments are working to improve relations with indigenous peoples in numerous spheres, the situation is still a major challenge. Environmental and indigenous rights organizations in the region and in industrialized countries frequently mobilize in protest of those activities which are viewed as having significant negative impacts on local communities, uncontacted indigenous groups and on the environment. Such protests

⁴ There is an unresolved debate as to whether the term “Peoples” or “Population” should be used.

ultimately delay, frustrate and in some cases, even terminate projects. A common refrain from leaders and representatives of indigenous peoples is that:

“Indigenous people understand that direct actions such as national or regional strikes, work stoppages, and disruptions of [resource] facilities may lead to undesired and unpredictable outcomes. However, in most cases, whenever the indigenous communities undertake direct actions, they do so to press for dialogue with governments and [resource] companies. They emphasize that they take such actions solely in the absence of alternatives such as a joint policy or project planning.”⁵ “Without opportunities for direct input, indigenous peoples and NGOs explain that they are forced to initiate direct actions, work stoppages, strikes and facility take-overs.”⁶

There are numerous examples of recent instances where resource and infrastructure developments have resulted in significant conflict between indigenous peoples, resource companies and national governments in the Andean/Amazon Basin. The conflicts concerned both environmental and social impacts. See Appendix IV for further details. They include the following:

1. Opposition to the Cuiaba natural gas pipeline in Bolivia;
2. Conflict between Chile’s Indigenous Law and Chile’s general electric services legislation over the Ralco Dam on the Bio-Bio river;
3. Protests, litigation and violent conflicts in Colombia involving the U’wa opposition to Occidental Petroleum Corporation’s exploration in U’wa traditional territory;
4. Litigation against Texaco, protests against government and barricading of highways in Ecuador over resource development; and
5. Suspension of construction in 1999 of a state-owned Venezuelan power line due to protests by the Pemón Indians.

Some of the conflicts could have *“been generated through an absence of discussion, information exchange, and mutual understanding...”*⁷. Some of these conflicts might have been avoided or better managed if: (1) mechanisms for meaningful consultation existed; and (2) indigenous people had clearer participatory roles in natural resources management.

“Governments and companies should weigh initial costs against delays produced by misunderstandings, local resistance, and direct actions. A weighing would illustrate that consultation and regular dialogue are not simply appropriate, but are more efficient for long term working relations.”⁸

⁵ Weatherhead Center for International Affairs, “Perspectives on Consultation”, Harvard University: Cambridge, Massachusetts, March 2000 at 29.

⁶ *Ibid.* at 34.

⁷ *Ibid.* at 3.

⁸ Weatherhead Center for International Affairs, “Perspectives on Consultation”, Harvard University: Cambridge, Massachusetts, March 2000 at 33.

V. BANK STRATEGY AND RATIONALE FOR BANK SUPPORT

The Bank does not have a **specific** policy addressing indigenous peoples, however it addresses their concerns through its operational activities. The Bank's Indigenous Peoples and Community Development Unit's work is focused on poverty reduction and social equity as they affect indigenous peoples. This Initiative aims to fund a specific series of activities that if well carried out, can contribute to a reduction in the number or severity of conflicts between indigenous peoples and Andean/Amazon Basin Region countries over hydrocarbon exploration and exploitation. For details about Bank operations in support of indigenous peoples, see Appendix V.

A. U.N. Decade of Indigenous Peoples

Latin American indigenous organizations and some governments are increasingly looking to the Bank and other international agencies to provide them with the financing to support indigenous development programs. Bank support of this Initiative would be a concrete and practical contribution to the United Nations Decade of Indigenous Peoples. It might also encourage an increased number of innovative or special programs specifically dedicated to benefit indigenous peoples.

B. Canadian Programs in Support of Indigenous Peoples

In some countries, special funds have been established to help promote development of indigenous peoples. For example, in Canada, governments fund programs specifically targeted at improving the capacity of indigenous peoples to participate in consultations, in negotiation of impact benefit agreements, and in natural resource projects. This Initiative builds on this type of best practices. While the examples cited are restricted to Canada they are important precedents since Canada is a jurisdiction that is frequently looked to for indigenous developments. They are some of the newer ways in which governments and indigenous groups are working together to facilitate consultation and to achieve economic self-sufficiency. They demonstrate that the type of concept outlined in this document is in keeping with the kind of support provided to indigenous peoples in other countries. For further details on the Canadian programs, see Appendix VI.

VI. THE INITIATIVE

A. Objectives

1. **The overall PRIMARY OBJECTIVE of this Initiative, the KEY PRIORITY, is to establish formal, effective and meaningful processes of consultation between Andean/Amazon Basin country governments and indigenous peoples in the hydrocarbons sector**, regarding oil and gas exploration/development activities on the lands and traditional territories used or occupied by indigenous peoples. Where governments already have a consultation policy or procedures in place, the overall objective is two-fold:

- (a) to provide improved definition of what consultation means; to draw up government consultation guidelines or improve on existing ones; to provide interpretations of terms or draft regulations spelling out the details of the consultation obligation; and
- (b) to develop (or improve upon) implementation plans to put the consultation commitment into effective practice.

The specific objective or goal is to arrive at a practical policy and common operational framework agreement on prior consultation. This will enable governments to fulfill their obligations to indigenous peoples set out in their own national laws or pursuant to international conventions. It will also facilitate indigenous contribution to, and participation in, government decision-making prior to calls for bids on oil and gas exploration/development blocks. Regularization of consultation is expected to promote socio-cultural conditions that are conducive to a more attractive hydrocarbon investment climate and overall sustainable economic growth for countries and their indigenous peoples.

- (c) **The RELATED OBJECTIVE of this Program is for Andean/Amazon Basin country governments to carry out a series of activities selected by them, in consultation and collaboration with indigenous organizations and communities, from the Bank's Activities Component list.** The activities are designed to be carried out by governments in consultation and with the informed participation of indigenous peoples.

A Model Initiative

This Initiative can be conceived of as a model which, if successfully executed, can be implemented more comprehensively across other or all government ministries or agencies (e.g. ministries of agriculture, sustainable development and environmental protection, social services and health etc.) and for other sectors such as mining, forestry and large infrastructure and hydropower development. It can also be applied to environmental consultations generally in other project areas.

B. A Flexible, Inclusive Approach

Fundamental to this Initiative is the inclusion of indigenous organizations in establishment of the means of norms of consultation and in the activities to be carried out by governments. **In other words, indigenous participation at all stages of the Initiative activities is expected.** The aim is to build up partnerships between governments and indigenous peoples that will result in an improved quality of life for indigenous peoples, an improved natural environment, and greater certainty for governments and oil and gas investors. Since indigenous peoples will be part of the “process to define the process” of developing consultation, this concept document cannot predetermine what that means or what specific objectives must be attained. Rather, it sets out general parameters of what is expected. That being said, a good number of experiences and lessons learned on consultation and best practices have been published and applied. They should be consulted for model terms of reference for the consultation activity targeted in this Initiative. See “Community Consultation, Sustainable Development and the Inter-American Development Bank” a Concept Paper by Anne Deruyttere and Norman Schwartz, March 1996. See “Community Consultation: The Case of Darien” by Carlos César Perafán and Heli Nessim to be published in December 2000. (References <http://www.iadb.org/sds/IND/publication>).

See also “Lessons from Camisea” a case study on consultation and engagement, particularly with indigenous peoples published by the University of California Berkeley and Pro-Natura at (http://socrates.berkeley.edu/erg/Pages/wp_98_1.html).

See also “Perspectives on Consultation”, Weatherhead Center for International Affairs, Harvard University, March 2000.

Recognition of Country Differences⁹

Andean/Amazon Basin countries are at different stages of progress in their consultations with indigenous peoples, in land regularization reform and in environmental and socio-cultural protection. They also have different needs, different laws and different percentages of population that are indigenous or tribal peoples. Accordingly, this Initiative requires flexibility to recognize country differences.

Significant efforts have, and are being made by country ministries and departments in consultations with indigenous peoples and in environmental protection. Set out below are very brief highlights of some government advances.

1. **Bolivia** is in the final stages of validating a proposed hydrocarbon regulation with indigenous peoples and oil companies. It envisages a training program for indigenous peoples and has already carried out training of coordinators. It has a well structured legal framework and has norms or legislation regarding land tenure. It has initiated a leap forward on sustainable development in three areas: social, economic and environmental. The World Bank recently approved a \$5 million loan to Bolivia part of which will be for consultation and capacity building for oil and gas activities.
2. **Ecuador**, on the other hand, has not yet begun consultation with indigenous peoples. There is a will to progress in areas of environmental and social community, however, the situation in this country with respect to indigenous organizations is somewhat more complicated than in other countries. Ecuador, through the Ministry of Mines and Energy, (but without indigenous input), is working on a draft regulatory framework for gas transmission and distribution. Included in it will be clarification on consultation, public hearings and environmental assessment.
3. In **Venezuela**, a new constitution was promulgated recently with full recognition of the rights of indigenous peoples. The constitution provides for indigenous people to be represented in the Constituent Assembly. There is also a new environmental regulatory framework. However, the political situation in respect of oil and gas development is as yet uncertain and there are growing conflicts with indigenous peoples over land and resource rights.
4. In **Colombia**, government representatives are making every effort to dialogue with indigenous peoples, notwithstanding political problems, the war on drugs, poverty, corruption, violence and civil war. Indigenous people living in areas where oil extraction is taking place are often victims of this conflict. There are situations of serious oil related confrontations and violence between indigenous peoples, guerrilla groups, oil companies and the government. Trust is seen to be lacking and indigenous peoples say they do not believe that the government has the political will to carry out a tripartite dialogue on consultation.
5. **Chile** appears prepared to now give more attention to indigenous and environmental issues than it previously has. However, it is a major oil and gas importer. Chile’s interest in this Program may be more for a methodology of consultation that could be applied in other non-hydrocarbon sectors.

⁹ Information in this section about the status of progress on indigenous peoples issues in the Andean/Amazon Basin countries was obtained from views expressed by various hydrocarbon co-ordinators who participated in the OLADE and World Bank Second Tripartite Meeting held on June 7-9 in Cartagena, Colombia. It is not meant to be a comprehensive report of developments in the countries.

6. In **Peru**, mining is more significant than oil and gas. There are legal directives for hydrocarbon development and guidelines for community relations. However, the guidelines do not have the force of law. As of February, 2000 a management committee was established with representation from industry and indigenous groups, to discuss the OLADE and World Bank tripartite meetings on *Environmental and Social Considerations for Hydrocarbon Activities in Fragile Areas of the Sub-Andean/Amazon Basin*.

Freedom to Choose Activities

Under this Initiative, countries will be given much freedom to chose the activities they wish. The Bank recognizes that a “one-size fits all” approach to development and indigenous peoples may not work. The Bank wishes to recognize individual country-specific priorities and resource/investment development objectives as well as the advances already made by countries in improving the environment and the situation of indigenous peoples. The Bank proposes to give flexibility by providing an Activities Component list containing an ideal list of activities that borrowing countries could engage in and obtain financing for under this Initiative. The activities fall into two categories – 1st priority and 2nd priority. **Borrowing countries will have the freedom to choose to carry out only the 1st priority activities or the 2nd priority activities or a combination of both sets of activities that they wish funding for.** Even within the 1st and 2nd priority activities, borrowing countries can decide which of the several listed items they seek to have financed.

Variable Funding Levels

The level of funding provided to any particular country will thus vary depending on the number and type of activities a country commits to engage in, the financial instruments proposed by the Bank and thresholds established for them. Some countries facing heavy debt loads may be hesitant to borrow the sums of money needed to support all the activities listed as 1st priority in the Activities Component list. Some may be reluctant to undertake secondary activities on difficult and politically charged issues like land tenure. Others may have some activities well in hand and not need external funding. This should not mean that progress cannot be made in other areas that the countries are prepared to advance on.

C. The Initiative – The “Activities Component”

Activities Component

The 1st priority activities which are included in this Initiative are the following:

1.	Institutional Strengthening
2.	Capacity-Building Indigenous Representatives
3.	Establishment of Consultation Process with Indigenous Peoples & Ethnic Groups
4.	Design & Implementation of Preliminary Socio-Cultural and Environmental Baseline Studies

1. Institutional Strengthening

- **strengthen the technical, regulatory and administrative capacity of government institutions in charge of land tenure, cultural assessment, indigenous affairs and environmental control (with a particular emphasis on the hydrocarbon/energy ministry), to carry out effective**

consultations with indigenous peoples prior to government decisions or actions that could affect them.

- (a) **Objective:** This part of the Initiative is intended to provide institutional strengthening to the energy/hydrocarbon ministry of government and other line agencies or ministries responsible for any of the activities under this Initiative. This will be done through:
- in-service training and workshops,
 - advisory services,
 - technical assistance and funding for structural organizational changes in order to prepare government representatives to effectively initiate, conduct and implement consultations with indigenous peoples envisaged in this Initiative.

It is also intended to provide access to financial resources for strengthening the government capacity in all relevant line ministries for improved participatory approaches to oil and gas development and implementations of regulations.

- (b) **Description:** Governments often face a number of limitations in respect of their relationships with indigenous peoples and environmental matters. Many of the line agencies or ministries responsible for matters pertaining to indigenous people lack adequate, professionally qualified staff trained in indigenous matters or available funds. Paternalistic attitudes may also exist and overlapping and conflicting approaches to consultation and environmental protection (eg. different ministries responsible for different issues) may exist within government. There may also be a lack of a uniform and up-to-date databanks of information for government staff. If the consultation processes with indigenous people and other community representatives are to be successful and if this Initiative is to serve as a model for other sectors, the right framework, managerial commitment and cross-cultural communication preparation must be in place.

Under this component, the Initiative will be able to finance the following activities:

- (i) **review and evaluation of existing consultation practices to date** in the hydrocarbon/energy ministry and review of the manner in which other line ministries, who may have responsibility for any of the Activities Components described in this document, address indigenous concerns. Indigenous organizations should be invited to participate in or, at their option, provide input to this review. The review should describe:
- the circumstances when consultation is undertaken, with whom, by whom,
 - consultation methods employed,
 - the scope or extent of consultation,
 - degree of coordination among government ministries or agencies,
 - the impact of consultation on government decisions and policies, and
 - recommendations for improvement, where needed.

It should also review:

- the ability of indigenous peoples' own organizations to interact with the hydrocarbon/energy ministry and other relevant government ministries.

- (ii) **review and evaluation of current government legal and policy frameworks** with an emphasis on the energy/hydrocarbon ministry to determine if these need to be amended or improved to facilitate prior consultations with indigenous peoples.

The review should also:

- evaluate whether existing consultation duties and policies are being implemented,
 - barriers to implementation, and
 - provide recommendations to overcome any weaknesses.
- (iii) **evaluation of the adequacy of existing personnel, resources and administrative supports in the hydrocarbon/energy ministry and other line ministries** to carry out the consultation processes envisaged in this Initiative including, recommendations for any additional needed resources;
- (iv) **engagement of experts** – (in consultation with indigenous organizations). A social specialist with expertise in public consultation (particularly with indigenous peoples), an organizational management specialist and a legal consultant can be engaged to work together as a team to analyze the work done in items (i) to (iii) above. The team will produce a practical study report recommending how the hydrocarbon ministry and other line ministries can better organize or structure themselves to effectively carry out their responsibilities and this Initiative. It is also to advise how laws and policies can be devised, improved or applied so as to support the fundamentals of this Initiative.

The study should include:

- consideration of a proposal for a specialized coordination unit within the energy/hydrocarbon minister or elsewhere in government which will be empowered, trained and mandated to: (a) facilitate and promote a coordinated approach within government on matters pertaining to indigenous people; (b) provide advice to government; and (c) enter into consultations and negotiations with indigenous groups.

If such unit already exists, the study should:

- evaluate its effectiveness and provide recommendations for improvements, where desirable.

In both cases, it will be essential to obtain the input of indigenous organizations about the structures that are more likely to work or which currently work well.

The study report should also address:

- how continuity of personnel responsible for consultation under this Initiative can be maintained. Individuals are important guardians of institutional memory and commitment. It will be important to ensure that the government and indigenous representatives undertaking consultation under this Initiative are maintained in that function until conclusion of the process;

(v) **development of an appropriate socio-cultural educational training program for the government representatives who will undertake consultation** under this Initiative. Consultation is a skilled art which requires training and experience if it is to be practised successfully. The purpose of the training is to develop skilled participants who can deploy efficient management approaches to support a sustainable consultation process with indigenous peoples. A trained person or group of people is needed to put the consultation processes with indigenous peoples into place and to be accountable for providing a timely, visible and formal report on the outcome of consultation;

(vi) **development of an appropriate educational program in social management, environmental protection and indigenous peoples issues for senior managers** within the energy/hydrocarbon ministry through workshops offered by the Bank (i.e. train the trainer) or by other appropriate persons. Thereafter the senior managers can then train ministry staff or staff in other line ministries.

The work of educational professionals and consultants in preparing and delivering training programs including, curriculum design, development of course content and teaching materials will be funded. If appropriate training programs already exist, the Initiative will be able to finance their further development and application. Funds would also finance travel, living expenses and logistical supports for participants;

(vii) **design and establishment of a web-based information system and management and administrative systems (or improvement of existing systems)** for the energy/hydrocarbon ministry (or new government indigenous coordination unit) (including provision of needed equipment and computers). Some governments have a great deal of data on indigenous peoples and oil and gas exploration/development and environmental studies but this is not coordinated. Others have little information. There is a need to coordinate existing and future data into a functional database of socio-cultural and environmental information for use by the hydrocarbon ministry, by other government ministries and ultimately by indigenous peoples and oil and gas companies;

(viii) **consensus building activities and events** undertaken by the hydrocarbon/energy ministry or other line ministries beyond the consultation effort itself.

2. **Capacity-Building, Indigenous Representatives**

- **strengthen the technical, professional, administrative and financial capacity of national, regional or local indigenous organizations, traditional authorities and individual indigenous persons to engage in the development of, and implementation of the consultation processes contemplated under this Initiative**
- **strengthen the capacity of indigenous peoples to participate meaningfully in development of socio-cultural and environmental baseline studies and in any secondary activities that governments may engage in**

(a) **Objective:** This part of the Initiative is intended to strengthen the capacity of indigenous organizations and individuals to effectively engage in the processes of consultation and

other activities which will be initiated by governments under this Initiative. It is also intended to provide assistance to indigenous organizations and communities who identify specific needs requiring financial support under this Initiative.

- (b) **Description:** Indigenous organizations or representatives who will be participating in the consultation processes need additional skills set to effectively participate. Accordingly, they will work, together with government representatives, in the design, and where possible, the delivery, of the capacity-building programs referred to below.

Under this component, the Program will be able to finance the following training/skills building:

- (i) training on consultation methodology;
- (ii) training on oil and gas issues as well as on government procedures in calling for bids on oil and gas blocks;
- (iii) technical training assistance on environmental assessments and socio-cultural baseline studies including:
 - in the technical scientific methods for assessment and monitoring
 - funding for seminars and courses on technical matters
 - funding to hire experts to assist indigenous organizations and local communities to participate in baseline studies and to develop development plans.Training/skills building programs to assist in interpreting and comprehending Environmental Impact Assessments and their Environmental Management Plans will also be financed;
- (iv) computer training programs for indigenous peoples who will participate in the baseline studies;
- (v) computer training programs and funds for the purchase of computer equipment for indigenous organizations to enable them to have the capacity to access web-based information systems that may be established by governments (see s.1(vii) of institutional strengthening).

Financing under this Initiative will be able to be provided not only for technical assistance and training but also for transportation, travel costs, food, accommodations and computers. Consideration should also be given to providing some compensation to indigenous participants who may spend considerable time away from their homes for the training as a means of easing adverse impacts on their incomes and families.

Financing can also be made available, on a demonstrated needs basis, to assist indigenous authorities to meet with their peoples for the following purposes:

- (vi) indigenous organizations will need to select appropriate representatives from indigenous groups to engage in the consultation processes and environmental and socio-cultural baseline studies. Those representatives will need to consult with communities in villages distant from national, provincial or district centres. Decisions and positions proposed to be taken by indigenous authorities will have to be discussed and confirmed by their constituencies, in accordance with their

own specific social organizational structures and in agreement with their own social control norms and procedures. Although all of this will take time, it will more likely increase the chances of a successful consultation process. Indigenous peoples need to have the time and resources to make their own systems of consultations work. Reasonable funding should assist that effort.

Financing will be able to be made available for indigenous organizational meetings relevant to this Initiative to assist them to work together.

- (vii) it is desirable to have some level of coordination among indigenous organizations to facilitate the consultation task. If support can be provided to local and regional indigenous leadership to improve communications with their communities and to be able to follow-up on the consultation processes, the government's task will be facilitated. Consideration should be given to establishing a fund for indigenous salaried positions to undertake the coordination work.

Case Studies/Best Practices

A number of case studies, best practices and “lessons learned” on training and capacity building with indigenous peoples have been published. These may be a useful guide for the indigenous peoples capacity-building component of this Initiative. See International Petroleum Industry Environmental Conservation Association (IPIECA) best practice series papers at (www.ipieca.org). See “Lessons from Camisea” previously referred to and Chevron in Peru, “Community Relations with Indigenous People in the Amazon Rainforests” referred to at the IPIECA web site. See also the OLADE/World Bank Sub-Andean Regional Project regarding efforts on training and institutional build-up at (www.olade.org.ec/redeap).

3. Consultation Process with Indigenous Peoples & Ethnic Groups

- **design, establishment and implementation of a process of consultation with indigenous peoples and ethnic groups prior to government calls for bids on oil and gas exploration/development blocks**
 - **if consultation processes already exist, clarify, define and improve existing government consultation processes, and**
 - **design, establish and implement a mechanism for ensuring the implementation of government commitments established by policy or law.**
- (a) **Objective:** This part of the Initiative consists of the actual design and implementation of the process of consultation with indigenous peoples and ethnic groups identified as the primary objective of this Initiative. If a process already exists, the objective is to ensure that, in practice, the consultation process is actually working or working as effectively as it could. Although consultation obligations are accepted in some countries, there are varied interpretations and practices. No process has been institutionalized to mandate or regulate community relations. The lack of precision invites conflict.
- (b) **Description:** This Initiative will be able to finance the following three phases of activities:

Phase 1 Pre-Consultation Meetings to Plan the Consultation Process – The hydrocarbon/energy government representatives or other representatives mandated to initiate consultation will need to meet periodically with indigenous representatives from international, national, regional and local organizations to work on co-design, development and implementation of the consultation process. A working committee comprised of representatives from government and indigenous organizations should be struck to map out the process, identify alliances and possibly prevailing conflicts among groups and to establish concrete objectives, timeframes, responsibilities and action plans.

In order to ensure the ultimate validity of the entire consultation process, governments will need to ensure that the participants are truly representative of indigenous organizations and communities and have authority to make commitments. In this regard, governments will have to rely heavily on indigenous organizations to identify those who should be involved in design of the process and the process itself.

Indigenous political leaders may need financing for discussions with their constituents in local communities. National and regional indigenous organizations can assist government in identifying and establishing an inclusive indigenous stakeholder group. This Initiative will be able to fund expenses for these meetings (where there is a demonstrable need) including accommodation, food, travel, meeting space and needed equipment.

Phase 2 Actual Consultation – This phase is the start of the formal consultation processes. **The aim is to arrive at a precise framework agreement on consultation** to avoid oil and gas resource conflicts, to settle disputes **and to develop terms of reference for consultation on any secondary activities that may be undertaken by government under this Initiative.** Activities contemplated in this phase include:

- (i) arriving at a definition of and agreement on consultation which takes into account what indigenous peoples mean by prior consultation and what reasonably can be achieved by governments prior to calls for bids on oil and gas exploration/development blocks;
- (ii) agreement on principles of consultation;
- (iii) agreement on the timeframe allocated for the consultation process;
- (iv) identification of the roles and responsibilities of the parties;
- (v) agreement on mechanisms for consultation (eg. meetings, committees, correspondence, information exchanges, site visits);
- (vi) agreement on the scope and content of the dialogue and the ultimate type of agreement expected from the process;
- (vii) interim measures to be taken by government on consultation where government proposes to proceed with calls for bids on oil and gas exploration/development prior to completion of the consultation processes.

This Initiative will be able to finance all of the reasonable and necessary costs incurred by government and indigenous representatives for the duration of the consultation. Also included will be the cost of engaging an independent facilitator, acceptable to the parties for all or any part of this process.

Continuity of the respective representatives of government and indigenous organizations will be critical throughout the process, especially in the early phase of trust building.

In addition to the consultation guides referred to in section VI. B. of this document see “World Bank Best Practices in Dealing with the Social Impacts of Hydrocarbon Operations”, Consultation and Participation: Overview at (<http://www.worldbank.org/html/fpd/energy/oil&gas/BestPractices/1/11.html>).

Phase 3 Implementation of Consultation Agreement – This phase contemplates **government and indigenous participants taking concrete steps to implement the framework agreement** arrived at during the consultation process. If the consultation did not yield agreement, it should have led to a better understanding of the respective positions of the parties and opportunities for further dialogue. **A formal report on the outcome of the process**, with accompanying explanation, where appropriate and any recommendations on lessons learned **shall be co-drafted by representatives of the participants for ultimate submission to the Bank**. The assistance of an independent specialist (anthropologist) to draft an assessment or explanation of the cultural meaning of positions taken by indigenous organizations may be beneficial.

- For government, implementation means that individual government ministries and agencies will need to develop more detailed policies and strategies (or improve existing ones) to implement the agreement arrived at during the consultation process.
- For indigenous organizations, implementation means design and establishment of mechanisms and structures to handle activities at the local, regional or national level in furtherance of the agreement.

This Initiative will be able to finance reasonable costs incurred by government and indigenous representatives in the drafting of a formal report on the outcome of the consultation process including necessary travel, accommodation, food and administrative costs (including necessary translation costs).

4. **Environmental & Socio-Cultural Baseline Studies**

- **design and implementation of preliminary socio-cultural and environmental baseline studies.**
 - (a) **Objective:** The aim of the environmental and socio-cultural baseline studies is to:
 - assemble information into a coordinated and comprehensive on-line computer database so as to permit governments and oil companies to make informed decisions about the likely impact of oil and gas exploration/development on indigenous lands and territories before those activities are actually commenced
 - provide useful information that can be used to define exclusion areas which should be segregated from development either for conservation, cultural and environmental protection reasons or because of indigenous opposition to development in certain areas. Such opposition could include disruption of actual land use activities, such as agricultural production areas, as well as culturally modified landscapes such as burial sites or domesticated or wild trees and plants that serve to define territories and/or have religious significance.
 - (b) **Description: The Initiative will be able to finance the following activities:**
 - determination of initial terms of reference for environmental impact assessments and their cultural integrity impact assessment components
 - conduct of the studies

- the participation of indigenous peoples in the preparation of terms of reference and conduct of the studies.

Bank Policy & Guides

The Bank's Environmental Policy (1979) and other operational standards and guidelines require that all operations financed by the Bank be environmentally and socially sustainable. The Procedures of the Committee on Environment and Social Impact (CESI) as well as the Bank's Guidelines and Environmental Assessment publications may be consulted in the preparation of the terms of reference and conduct of environmental and socio-cultural baseline studies under this Initiative (See IDB OP-703 Environment and Guidelines and Environmental Assessments at (http://www.iadb.org/sds/ENV/site_393_e.thm)).

Study Activities

In order to ensure the identification and evaluation of all relevant direct and indirect, immediate, long term and cumulative social and environmental impacts that might result from oil and gas exploration and development in environmentally sensitive areas and on indigenous populations **the following study activities will be able to be financed:**

- (i) development of accurate, up-to-date cultural land use maps, photographs and physical characteristics of areas inhabited by indigenous peoples that are likely to suffer impacts from development pressures brought on by oil and gas exploration and production. Actual assessment studies of possible impacts will also be financed;
- (ii) development of environmental profiles and mapping of critical environmental zones and cultural and sacred areas;
- (iii) description and assessment of the cultural background, social structure and economic profile of indigenous peoples (including income/revenue sources, special needs and traditional indigenous economic practices and concepts);
- (iv) development of inventories of the resources and land uses by indigenous peoples with specific attention to the differences between actual land use and cultural land use;
- (v) study of the experience of indigenous peoples with oil and gas exploration/development and with local, regional or national governments including, review of existing government services to indigenous communities and need for additional services;
- (vi) identification of boundary disputes and/or other similar data that may have a bearing on this Initiative.

The Initiative will also be able to finance:

- (i) institutional capacity building to develop and use cultural land use maps and cross cultural impact assessments and environmental assessments in government planning and decision-making;

- (ii) creation of, or enhancement of existing government databases of information on socio-cultural and environmental considerations in oil and gas exploration/development;
- (iii) purchase by government of necessary computer hardware and software;
- (iv) engagement of experts to implement the computer database or improve existing systems or to provide advice to government; and
- (v) administrative costs to incorporate the environmental and socio-cultural baseline study results into the database.

The aim is to create an accessible, on-line computer database that can be modified by government and is available for use by government ministries in decision-making processes. Alternatively, the aim is to improve existing databases and data based links. Ultimately, the information should be available on line for use by oil and gas companies prior to exploration and development and for indigenous peoples in development of their own plans.

Activities Component

The secondary activities which may flow from the 1st priority activities and which may be financed under this Initiative are:

5.	Regularization of Land Tenure
6.	Design and Preparation of Indigenous Community or other Populations' Development Plans
7.	Definition of Indigenous Participation and Community Investment Mechanisms

5. Land Tenure

- **improve the land and natural resources security of indigenous peoples through land tenure definition, regularization, and protection of the integrity of titled indigenous lands**
- **facilitate the participation of indigenous communities in self-initiated proposals for better access to lands and resources**
 - (a) **Objective:** This part of the Initiative aims to increase the security of indigenous peoples through:
 - (i) clarification and definition of indigenous territorial boundaries and protection of titled indigenous lands;
 - (ii) review and evaluation of the adequacy of the policy, legal and institutional frameworks relating to indigenous land tenure. Where such study has already been carried out, the Initiative will be able to finance reasonable extensions to it or implementation of recommendations that would help achieve the objectives of this part of the Initiative;
 - (iii) funding of community-driven projects to:

- assist indigenous communities in organizing themselves according to their land uses and practices
- research the legal status of their land tenure situations
- provide support for regularization of titles and land acquisitions in accordance with each country's agrarian laws and procedures.

Bank Policy & Guides

The objective includes possible relocation of indigenous peoples in compliance with the Bank's Involuntary Resettlement Policy OP-710. See best practices – Involuntary Resettlement in IDB Projects. Principles and Guidelines. See also a study to be available by November 2000 entitled "Land Titling and Indigenous Peoples" by Roger Plant and Soren Hvalbof at (<http://www.iadb.org/sds/IND/publication>).

- (b) **Description:** Indigenous communities often hold land communally and maintain territorial claims. Despite the fact that a number of governments now recognize indigenous territories in principle through ratification of *ILO 169*, the boundaries and rights are usually legally undefined and unresolved.¹⁰ Territorial areas exceed community land areas. Compounding the problem is the fact that most commercial and territorial lands are now populated by some colonist residents. Their concerns and claims for compensation would have to be dealt with in any proposed land reallocation scheme.

Indigenous organizations are calling for greater government recognition and protection of their lands and natural resources. However, land tenure issues can be complex, politically and legally challenging and require a long lead time to bring about changes. **The Initiative will be able to fund the following planning steps** that should be taken before initiation of other steps that may be contingent on recognized indigenous land titles, an objective that may only be achieved in a phased manner:

- (i) assistance to government in designing and financing programs for the identification, demarcation and registration of indigenous lands, especially in areas of current or proposed hydrocarbon development. What would be financed is technical assistance, training, surveying and demarcation services, equipment, vehicles, operational costs, including travel, per diem, fuel and supplies;
- (ii) technical/legal assistance for a study review and evaluation of the legal, policy and institutional frameworks regarding indigenous peoples right to lands and resources or update and progress on existing studies having similar objectives to this Initiative. Where national legislation needs strengthening, the study may include recommendations for improving legal recognition of the customary or traditional land tenure systems of indigenous peoples. However, where the traditional lands of indigenous peoples have been brought by law into the domain of the state and where it is inappropriate to convert traditional rights into those of legal ownership, the study should include recommendations for alternative arrangements which would grant long-term renewable rights of custodianship and use to indigenous peoples
- (iii) technical advisory and financial assistance to governments to facilitate indigenous community access to and purchase of lands;

¹⁰ Weatherhead Center for International Affairs, "Perspectives on Consultation", Harvard University: Cambridge, Massachusetts, March 2000 at p 26.

- (iv) technical and financial assistance to governments to assist them in taking appropriate steps to protect the integrity of titled indigenous lands;
- (v) participation of indigenous communities or organizations in review of government proposals for regularizing land access and use and in identification and demarcation of indigenous lands;
- (vi) training of indigenous peoples so as to strengthen technical, managerial and administrative capacity in natural resources management and sustainable development of indigenous lands; and
- (vii) indigenous community based projects for land titling and demarcation in selected areas jointly agreed to by government and indigenous communities/organizations.

6. **Indigenous or Other Community Development Plans**

- **design and preparation of culturally appropriate indigenous peoples or other communities' development plans**

- (a) **Objective:** This part of the Initiative aims to assist government to develop, in collaboration with indigenous communities and other communities national, regional and local development plans and programs for advancement of indigenous peoples and other community groups. Although such advancement is a component of a country's national development goals, it is important that strategic development plans be formulated, taking into account the wishes, needs and aspirations of these groups.
- (b) **Description:** Indigenous communities may bear a disproportionate burden of the negative social, economic and environmental effects that development projects may bring, without realizing commensurate benefits. Indigenous peoples sometimes view the principles and efforts of mainstream developments as inappropriate or unsustainable, and as an intrusion into traditional ways of life.

This segment of the Initiative will support the efforts of government in increasing recognition of the right of indigenous peoples to determine their own pace and path of development. **Financing will be able to be made available for the following activities:**

- (i) institutional strengthening in the development of (or improvement of existing) indigenous and other community groups' plans through in-service training and technical assistance to the agencies responsible for these groups;
- (ii) for the conduct of government initiated or supported workshops to begin a consultation process (or continue existing processes) to understand the main development proposals presented by indigenous communities and other communities; to identify potential constraints and opportunities for the formulation of indigenous or other community development strategy and to establish lines of action within the indigenous or other community development strategy and priorities;

- (iii) to assist indigenous peoples and other communities in formulating their development plan strategies and priorities, planes de vida* or cultural plans and in participating in government-led workshops.

(*as part of development plans, indigenous peoples emphasize “Planes de Vida”, a process that includes continuity of indigenous cultural patterns while factoring in the need to respond through participation to the political and economic fabric.)

7. **Indigenous Participatory Policies and Indigenous Community Investment Mechanisms**

- **definition of indigenous participation in the use, management and conservation of natural resources.**

- (a) **Objective:** This part of the Initiative aims to assist government in defining or enhancing indigenous peoples’ participation in natural resource projects including, programs for the exploration or the exploitation of oil and gas resources on or in proximity to indigenous lands and territories. It is also meant to benefit indigenous communities by ensuring that indigenous peoples participate in the benefit of such activities and receive fair compensation for any damages which they may sustain as a result thereof.
- (b) **Description:** Governments in the region are increasingly recognizing the importance of effectively addressing the right of indigenous peoples to participation in the use, management and conservation of natural resources pertaining to their lands and in their right to participate, as beneficiaries in the natural resources owned by the state. They are also aware of indigenous demands for consultation and involvement in formulating development strategies and investment plans. The government response is that it lacks the financial resources to address these issues.

This component of the Initiative will support government capacity and initiatives to involve indigenous organizations and indigenous peoples in decisions about oil and gas development and natural resources management. **Specifically, financing will be able to be provided for the following:**

- (i) institutional strengthening through in-service training and technical assistance to the government in order to implement any institutional reforms required to promote a new and consistent partnership approach with indigenous peoples;
- (ii) development of a government guideline or policy for indigenous participation in the use, management and conservation of natural resources;
- (iii) development, in consultation with indigenous peoples, of an action strategy to give effect to the government guideline or policy referred to above or to give effect to existing ones;
- (iv) creation of a political forum in order to develop harmonious relations and to facilitate discussion, debate and concerted action between indigenous peoples and elected officials;

- (v) development of an agreement-in-principle between government and indigenous peoples for the participation of indigenous peoples in government planning and decision making concerning oil and gas resources;
- (vi) creation of an indigenous investment fund to finance project proposals prepared by indigenous communities and their organizations for co-management of natural resources. Indigenous organizations or communities will be responsible for gathering the necessary information, consultation with their respective communities and traditional authorities, assuring that project proposals respond to community expectations and developing a participatory assessment of the conditions to be taken into account during project implementation; and
- (vii) creation of a program to permit the direct transfer of funds to indigenous communities to permit them to participate in natural resources benefits.

VII. POSSIBLE GOVERNMENT COST RECOVERY

The Andean/Amazon Basin countries may find general concepts and activities described in this document attractive, yet question the costs of participating. Energy and finance ministers may be concerned about any program, however desirable that would increase the country's debt load or trigger political opposition. Accordingly, countries who ultimately submit proposals to the Bank for financing of Component Activities may wish to consider a cost recovery mechanism that entails some repayment of Bank financing otherwise than through traditional country repayment sources. The Bank may be in a position to assist borrowing countries in evaluating and exploring this possibility.

1. Cost Recovery

All, or a portion of the financing advanced to borrowing countries under this Initiative could potentially be recovered by those countries from oil and gas companies, or be linked to oil and gas contracts or concessions granted to them. The rationale for such cost recovery is as follows. Those companies (and governments) already face significant risks and costs in some countries from a host of opponents. This includes indigenous peoples, other community groups and environmental NGOs challenging their rights to resource exploration and exploitation in or on their lands and traditional territories, and the grant of such rights without prior consultation and participation. If this Initiative can result in:

- an agreement on consultation between indigenous organizations and governments,
- improved structures to facilitate indigenous participation in the benefits of oil and gas development, and
- a better understanding and respect for their values and way of life.

Opposition to oil and gas companies and to government plans to open up the energy sector to an even greater degree, might reduce substantially.

Companies might be prepared to contribute to government costs of this Initiative if they concluded that on balance, the results of the Initiative would add value to their operations and business/investment plans for the region. Petroleum economics and decisions to invest in a particular region are affected by two key factors: political risk and economic factors. If some aspects of that risk could be removed or diminished,

companies might be prepared to offer better terms as part of their arrangements with host governments when bidding on/ negotiating contracts for oil and gas exploration/development blocks. It will be up to the borrowing countries to determine the merits of any possible cost-recovery mechanism.

VIII. PROGRAM IMPLEMENTATION

As this is a concept document, the specific situation of each borrowing country will have to be analyzed. The Activities Component list can be seen as a standard that is accepted by the Bank and reviewed by the countries against their own progress. The activities in that list (or alternative activities acceptable to the Bank) are those the Bank would be willing to finance.

The Bank's new institutional strategy completed in July 1999, and approved September last recommended, among other things, a strengthened country focus in operations. Under country programming, the Bank stated that it should do different things in different countries and concentrate on a more limited set of key sectors selected **through dialogue with national authorities**. In keeping with this strategy, implementation of this Initiative could entail the following activities:

- A. Bank review of financing mechanisms; and
- B. Dialogue with national authorities.

A. **Bank Financing Mechanisms**

Bank finance and operations officials will have to consider the financial products available to support this Program. There are technical cooperation and financing programs and instruments that the Bank can choose from. The choice of instruments will be decided upon a country by country specific basis and on the basis of dialogue between the Bank finance/operations staff and finance and other officials in the countries who will apply for this Initiative.

B. **Dialogue with National Authorities**

Bank country officers and consultants could initiate a dialogue with national authorities in those countries who have indicated interest in this Initiative. The objective would be to see how the Activities Component list corresponds to developments in those countries and what activities the countries would be interested in having financed.

To provide even greater flexibility, and to keep costs reasonable, borrowing countries could be invited to suggest alternative steps, acceptable to the Bank and to indigenous peoples, to achieve the objectives outlined in the Activities Component list. Where alternative suggestions are more workable in a specific country, those could be accepted as satisfactory for that borrower. The dialogue could assist Bank financing and operations officials in deciding upon the appropriate financing mechanism to support this Initiative.

IX. FEASIBILITY OF PROGRAM APPROVAL BY ANDEAN/AMAZON BASIN COUNTRIES AND INDIGENOUS PEOPLES

The Bank could find itself in a situation of having approved this concept paper and yet not be approached by borrowing countries to move to the next planning steps and to submit specific proposals for the Initiative. A practical step to implementation of the Initiative is to solicit written expressions of interest in this Initiative from indigenous organizations and Andean/Amazon Basin countries. Specifically, preliminary letters of interest should be obtained from country ministers of energy and finance and from leaders of the key indigenous organizations and communities.

The hydrocarbon/energy coordinators who are participating in the comment on this concept paper could endeavor to obtain the views of the ministers and incorporate those views in response comment to this document. At a minimum, a verbal indication of ministerial views could be obtained. If a written expression of interest can be obtained, this should be included in the response. The same applies to expressions of interest from indigenous leaders and communities. A consultant could be mandated to endeavor to obtain this.

Following receipt of the foregoing, a review and dialogue on the proposed Initiative could be undertaken by country officers who would ultimately be involved in project programming and technical assistance (with or without the assistance of any of the consultants) The review would be with countries who have expressed interest in the Initiative and would be aimed at carrying this concept document to the next stage of details and implementation.

X. BENEFITS AND RISKS

The Andean/Amazon Basin's most vulnerable groups, indigenous peoples, stand to be the main beneficiaries of this Initiative since they will reap the benefits of prior consultation with governments where oil and gas exploration/production is proposed on their lands and in their traditional territories; (assuming agreement is reached on consultation). They will also benefit from better coordinated, more efficient and more effective consultations by governments in decision making and in activities that may impact them. In addition, this Initiative will strengthen the capacity of indigenous organizations and representatives to consult with governments and to participate in such activities as socio-cultural and environmental baseline studies, land tenure activities, preparation of indigenous and other community development plans and in more effective and informed participation in government consultation and decision making in respect of use, management and conservation of natural resources.

Another benefit of equal importance is that the increased certainty offered by a proposed consultation agreement between governments and indigenous organizations will likely boost the confidence of foreign and domestic investors and thus improve the overall potential for economic advancement in the countries. If there is less conflict in the Region, there is the potential for increased investments by oil and gas companies. For oil and gas companies, the added certainty would likely reduce costs, risks and the uncertainties currently faced by these companies in the Region.

A major risk to accomplishment of the Initiative's objectives is: (i) failure by the country ministers of energy or finance to lend support for the Initiative due to overall cost concerns or fear of triggering added

social and political unrest from the challenges of properly carrying out the proposed consultation processes with indigenous peoples. A (ii) second risk is the potential for creating undue expectations if governments are not fully supportive or if some of the activities fall short of expectations. To mitigate these risks, the Initiative calls for letters of interest from individual ministers of finance or energy as well as from indigenous organizations. The Initiative also recommends a flexible approach to the activities contained in the Activities Component list. If the Bank agrees to provide even greater flexibility by entertaining alternative suggestions for achieving the objectives of the Initiative from the borrowing countries, risk may be reduced even further.

Another risk has to do with the possibility of a consultation agreement between governments and indigenous organizations not being reached. The process may trigger heightened expectations and disappointment in the event of inability to achieve agreement. This risk can be minimized through institutional strengthening of government, capacity-building of indigenous representatives and through well organized, highly structured pre-consultation meetings.

A final risk is that political risks which include the potential for social unrest may prevent governments from effectively participating in this Initiative or implementing any of its components. This risk may be minimized by offering the borrowing countries greater flexibility in selecting the Activities Component and by encouraging the countries to engage in an open dialogue with indigenous organizations, NGOs and other citizens.

XI. RECOMMENDATIONS

In order to translate the objectives of this Initiative into a practical action plan at the country level, it will be important to have a clearer picture of the capacity of the Andean/Amazon Basin countries to engage in this Initiative. It will also be necessary to determine what activities countries have already engaged in, what activities they have funding for and which activities they wish to carry out but cannot, due to a lack of funding. The following recommendations are offered:

1. Hydrocarbon/energy coordinators of the Andean/Amazon Basin countries should consult with their individual ministers of finance or energy at the time of receipt of this document in order to obtain preliminary reaction. This feedback should be provided to the Bank or its consultant.
2. A small consulting team be engaged by the Bank to undertake, together with Bank country officers, a practical review of the status of progress in each of the Andean/Amazon Basin countries on the 1st and 2nd priority activities listed in the Activities Component list. This would include travel to countries who have provided a written expression of interest in this Initiative to meet with officials in the key ministries or departments who would be involved in the Initiative. The objective would be to produce a practical and focussed report to the Bank advising of the status and indicating, at least in a preliminary manner, the activities that individual line ministries would like to see financed by the Bank. The report could then be used in progressing to the next step of preparing cost estimates of the proposed activities and amounts that could be committed.
3. Preliminary letters of interest in this Initiative be solicited from indigenous organizations and country political ministers in the Andean/Amazon Basin countries.

4. Countries who have provided letters of interest could be invited to draw up their own proposed work plans based on this concept document and findings contained in the report of the consulting team, referred to in recommendation 2 above. The intention would be to provide even greater flexibility to the countries by allowing them to specify which of the activities, within the 1st priority activities and 2nd priority activities they would be prepared to commit to. Flexibility could also be provided if the Bank was willing to entertain alternate suggestions for achieving the objectives.
5. A consultant(s) be engaged by the Bank to carry out a study of consultation methods and approaches utilized by governments in their relations with indigenous peoples. The study could include a brief general overview of the situation of indigenous peoples in various countries, government legal obligations regarding consultation and the regulations, policies or guidelines in place in those countries to guide government decision-making in respect of issues relevant to indigenous peoples. A cross section of developing and developed countries could be included in the study.

The aim would be to provide the study to indigenous organizations and Andean/Amazon Basin countries prior to initiation of the consultation process (outlined in this Initiative), to assist them to work together constructively to arrive at agreement on consultation that might actually work. The practical operational experiences, the “lessons learned” from other countries and other indigenous organizations could assist in negotiation of a consultation agreement.

6. If borrowing countries interested in this Initiative signal interest in considering a cost recovery scheme from oil and gas companies, an expert oil and gas economist could be retained to advise those countries further on possible repayment mechanisms potentially available in each of the Andean/Amazon Basin countries.
7. Once comments received on this concept document are analyzed and Bank acceptance of this document is obtained, steps be taken to obtain tentative cost estimates of the Activities Component list activities (with focus on 1st priority objectives) and potential schedules with a view to clarifying operations procedures for this Initiative.
8. If Andean/Amazon Basin countries interested in this Initiative, signal an interest in having more information about best indigenous practices in other countries, in addition to Canada, that the Bank consider funding a study project of a select number of developed and developing countries to outline the “lessons learned” and experiences with programs in support of indigenous peoples.

APPENDIX 1. THE CONCEPT OF INDIGENOUS PEOPLES

A frequently quoted definition of the term “Indigenous Peoples” is that given by the special UN Rapporteur for the study on the problem of discrimination against Indigenous Peoples in 1984, Mr. Martinez Cobo:

“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 the 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. In short, Indigenous Peoples are the descendants of the original inhabitants of a territory overcome by conquest or settlement by aliens.”

The Cobo definition applies only to the indigenous peoples of the Americas, Australasia and the Pacific. However, *ILO Convention 169* (1989) is broader and applies to both tribal peoples “whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations”, and to peoples “who are regarded as indigenous on account of their descent from the populations which inhabited the country at the time of conquest or colonization...”.

The most recent description of Indigenous Peoples is given by the World Bank (operational directive 4.20, 1991):

“Indigenous Peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics:

- (a) close attachment to ancestral territories and to the natural resources in these areas;*
- (b) self-identification and identification by others as members of a distinct cultural group;*
- (c) an indigenous language, often different from the national language;*
- (d) presence of customary social and political institutions; and*
- (e) primarily subsistence-oriented production.”¹¹*

For the purposes of this Initiative, who the indigenous peoples are who will participate will have to be identified by borrowing countries in consultation with the Bank.

¹¹ van de Fliert, Lydia, ed. “*Indigenous Peoples and International Organizations*”, Russell Press Ltd., Nottingham, UK, 1994 at pages 4-5.

APPENDIX II. BACKGROUND CONTEXT

A. Oil and Gas Investment and Development in Latin America

The forecast for Latin America is for significantly higher levels of growth and development. This growth requires energy. As a result, Latin American energy demands will likely increase significantly in the next decade. Due to political and economic reforms, competitive forces have been, and are being unleashed in the Andean/Amazon Basin region as various Latin American governments restructure, liberalize or privatize their energy sectors.

Existing debt obligations of Latin American countries preclude many of them from financing energy capital requirements through more debt. They must turn to private investors, both domestic and foreign to meet their needs. However, competition for capital and technology is more intense than ever as the oil and gas industry enters a dramatic new era of globalization, consolidation and exploration for investment opportunities. Countries are having to become more aggressive and proactive in their efforts to compete. In many countries, oil production has become a symbol of national economic development, growth and prosperity, particularly during the present period of high oil prices. At the same time, oil and gas exploration and development has led to substantial concern over adverse environmental and social impacts on fragile environments, protected areas and in or near indigenous territories including, inaccessible regions where energy resources lie.

B. NGO and Indigenous Peoples' Concerns Over Oil Activities

Paralleling this development, the past decade has seen increased recognition of the rights of indigenous and tribal peoples, supported by international legal instruments, to decide their own priorities for the development or use of their lands and natural resources in traditional territories. Indigenous peoples are emerging as a political force in many countries. Their continuing endeavors, and the efforts of NGOs to draw attention to their plight and to their cultures have prompted growing international concern over human rights, poverty, sustainable development, social responsibility and inter-ethnic conflicts. International oil companies operating in or near indigenous lands have, and are finding themselves at the center of controversy for their social and environmental practices or for decisions made by government in this area. In spite of agreements permitting oil and gas exploration on indigenous lands, discontent over such intrusion has, in some cases, led to protests, confrontations, work stoppages, sabotage, violence and the suspension or outright termination of projects.

Adequacy of Consultation and Indigenous Participation

One of the most significant issues to all parties is the question of notification and consultation obligations when governments grant access to, and use of lands and waters that are part of the resource base that sustains indigenous communities. Regional indigenous organizations in the Andean/Amazon Basin countries have been stating that consultations which governments and oil companies carry out after they are awarded concessions for oil or gas exploration/development and all other forms of consultation, which must take place at each stage of development, exploration and production is not **prior consultation**, as is envisaged in the *International Labor Organization Convention 169*. Governments of the region are more aware of issues related to environmental and cultural sensitivity, and the importance of indigenous peoples' participation. However, governments often lack the financial resources to meet international socio-cultural and environmental standards on these issues. This situation has added to disincentives to oil and gas investment in the regions.

APPENDIX III. INTERNATIONAL AND NATIONAL LAWS AND NORMS

A. Key International Instruments

There are a number of treaties, conventions and declarations that establish international principles and norms for human rights pertaining to minority groups, including indigenous peoples. Four key international instruments, the *1957 International Labour Organization Convention on Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries* (“ILO 107”), the *1989 International Labour Organization Convention 169 on Indigenous and Tribal Peoples*¹² (“ILO 169”), the 1993 United Nations (“UN”) *Draft Declaration on the Rights of Indigenous Peoples*¹³, 1993 (“UN Draft Declaration”) and the 1994 *International Covenant on the Rights of Indigenous Nations*¹⁴ (“International Covenant”), specifically apply to indigenous peoples and their rights to ownership or use of land.

They build upon and affirm past principles and norms contained in other international documents, while also modernizing those principles and norms to address new or outstanding concerns of indigenous peoples.

B. International Labour Organization Convention 107

The *1957 International Labour Convention No. 107* (“ILO 107”), on *Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries*¹⁵ addresses the right of indigenous peoples to pursue material well-being and spiritual development. It was a first international instrument in specific support of indigenous peoples. However, it was later seen as inappropriate for its view that indigenous peoples should be integrated into the larger society. The move away from integrationist language of Convention No. 107 led to the development of Convention 169.

C. United Nations Universal Declaration of Human Rights (1994) and International Covenant on Civil and Political Rights (1966)

The *United Nations Universal Declaration of Human Rights*¹⁶ and the *International Covenant on Civil and Political Rights*¹⁷ have specific significance for indigenous peoples. The Universal Declaration provides common standards for the human rights of all peoples and all nations, and proclaims the importance of traditional, political and civil rights, as well as basic economic, social and cultural rights.

¹² *C169 Indigenous and Tribal Peoples Convention* (International Labour Organization), 27 April 1989, Online <<http://ilolex.ilo.ch:1567/scripts/convde.pl?query=C169&query0=169>> (date accessed: 22 August 2000) [hereinafter “ILO 169”].

¹³ *United Nation’s Draft Declaration on the Rights of Indigenous Peoples*, (United Nations), 23 August 1993, DRFT9320.txt E/CN.4/Sub.;2/1993/29/Annex I, Online: <www.csis.org/drft9329.html> (date accessed: 22 August 2000) [hereinafter “UN Draft Declaration”].

¹⁴ *International Covenant on the Rights of Indigenous Nations*, 28 July 1994, ICRIN-94.TXT, Online: <<http://www.cwis.org/fwdp/International/icrin-94.txt>> (date accessed: 22 August 2000) [hereinafter “International Covenant”].

¹⁵ *A New Step in the International Law on Indigenous and Tribal Peoples*, 15 Okla. City U.L. Rev. 677.

¹⁶ United Nations Universal Declaration of Human Rights

¹⁷ *International Covenant on Civil and Political Rights (1966)* (UN Human Rights Commission), December 16, 1966, Resolution 2200A (xxi) of U.N. General Assembly) (Entry into force March 23, 1976) Online: (date accessed: August 31, 2000) http://www.unhchr.ch.htm/menu3/b/a_ceschr.htm (Note: all of the Andean/Amazon Basin countries have ratified this agreement).

The Covenant spells out civil and political rights and guiding principles based on the Universal Declaration.

D. United Nations' 1993 Draft Declaration on the Rights of Indigenous Peoples

The *United Nation's 1993 Draft Declaration on the Rights of Indigenous Peoples*¹⁸, developed with the direct participation of indigenous peoples representatives is a comprehensive statement of indigenous rights. It is presently under consideration within the United Nations. It addresses issues such as the right to participation, the right of indigenous peoples to direct their own development and to determine and develop priorities and strategies for the development or use of ancestral territories and resources. It also addresses the right to self-determination.

The concept of development is of great significance to indigenous peoples. It may differ significantly from the economic or developed world understanding of the term. Understanding what the legal instruments have to say about self-determination, what indigenous peoples think of development and what the specific development needs of the Andean/Amazon Basin countries are, will be important to this Initiative. For example, the design of indigenous community development plans may need to consider such issues as:

- what is desirable development for indigenous peoples?
- what voice do indigenous peoples have in decisions on resource development?
- do indigenous peoples have a right to manage the process?
- is there an avenue for development based on indigenous peoples' own identity?

This draft Declaration underscores the importance of consultation with indigenous peoples before resource development occurs on indigenous lands and the importance of community development plans.

E. International Covenant on the Rights of Indigenous Nations, 1994

The *International Covenant* adopts and builds upon the principles established in *ILO 169*. It is a comprehensive international law pact that addresses the long-term social, economic and political interests of indigenous nations in relation to one another and their respective states.¹⁹

With respect to protection of land and territories of indigenous peoples, the *International Covenant* enunciates principles that are consistent with, and contained in *ILO 169*²⁰. These include: the right to consultation, the right to freely participate in development plans and the obligation to provide restitution for any removal from land or compensation for any damage to existing land of indigenous peoples. In addition, it specifically states that each indigenous nation has both the *collective* and *individual* right to own, control and use its lands and territories according to its own desires and wants.²¹ The *International Covenant* also provides the right for indigenous peoples to have special measures to protect intellectual property on their land.²²

¹⁸ *Discrimination Against Indigenous Peoples, Report of the Working Group on Indigenous Populations on its 11th session Annex I Draft Declaration as agreed upon by the Members of the Working Group at its 11th session*, August 23, 1993. Online: (date accessed: August 31, 2000) <http://www.cwis.org/draft9329.html>.

¹⁹ Rudolph C. Ryser, *Evolving New International Laws From the Fourth World: The Covenant on the Rights of Indigenous Nations*, 1994 Center for World Indigenous Studies at 1, online: <http://www.cwis.org/icrinsum.html>.> (date accessed: 30 August 2000).

²⁰ International Covenant, *supra* note 3, Part VI.

²¹ *Ibid*, Part VI, para 24.

²² *Ibid*, Part VI, para 27.

F. International Labour Organization Convention 169

The *International Labour Organization Convention 169* (“ILO 169”), was adopted in 1989. It presents the concept that the culture and ways of life of indigenous and tribal peoples should and will survive. It presumes their right to development along lines they themselves wish. The Convention also provides, in a number of articles, for the right of these peoples and their traditional organizations to be closely involved in the planning and implementation of development projects that affect them. The key duties that states must comply with when measures are taken which may directly affect the land of indigenous peoples are as follows²³:

- (a) **Consultation** – Governments must consult in *good faith* with indigenous peoples whenever measures that may directly affect their land are at issue, and must establish means by which indigenous peoples can freely participate to the same extent as other sectors of the population.
- (b) **Right to Decide What is Best for the Land** – Indigenous peoples shall also have the right to establish their own priorities for the process of development as it affects their lives, beliefs, institutions and the lands that they occupy. This involves participation in the formulation and implementation of plans and programmes that affect them, and the government shall, where appropriate, ensure that studies are carried out to assess the social, spiritual, cultural and environmental impact of the planned activities.
- (c) **Occupation or Use of Land** – Governments must respect the special importance of land to indigenous peoples whether they occupy or simply use the land.
- (d) **Rights Respecting Natural Resources** – Indigenous peoples have the right to participate in the use, management and conservation of natural resources pertaining to their lands. They also have the right, whenever possible, to participate in the benefits of programmes for the exploration or exploitation of natural resources pertaining to their lands where the state retains the ownership of mineral or sub-surface resources or rights to other resources. Further, consultation must occur before undertaking or permitting any programmes for the exploration or exploitation of such resources on the land or territories of indigenous peoples.
- (e) **Removal from Lands** – Indigenous peoples who are removed from their lands must be relocated to lands with no diminution in land rights. There is a fundamental obligation to provide lands that are of quality and legal status equal to those that have been lost, and this must take into account the environmental aspects of the land lost and those received.
- (f) **Compensation** – There is an obligation, without qualification, to provide for fair compensation for any damages to the land of indigenous peoples.

G. International Decade of the World’s Indigenous Peoples

The *International Decade of the World’s Indigenous People*²⁴ (“IDWIP”) was proclaimed by the United Nations General Assembly in its resolution of December 21, 1993. The theme is “Indigenous People: Partnership in Action”. The IDWIP runs from 1995-2004. The main objective is strengthening international cooperation for the solution of problems faced by indigenous peoples in such areas as human rights, the environment, development, education and health. Among other things, the General Assembly

²³ ILO 169, Articles 6 & 8, 13-17.

²⁴ *International Decade of the World’s Indigenous People*, (UN General Assembly) 21 December 1993, Resolution 48/163.

resolution appealed to financial and development institutions to increase their efforts to take into special account the needs of indigenous peoples in their budgeting and in the programming.

A further development occurred on April 28, 2000 when the United Nations Commission on Human Rights adopted a resolution to be put to the Economic and Social Council to establish a permanent forum for indigenous people within the United Nations system. If adopted, the permanent forum would serve as an advisory board on indigenous issues relating to economic and social development, culture, environment, education, health and human rights.²⁵

H. United Nations Agenda No. 21

Agenda 21 adopted by the United Nations Conference on Environment and Development in 1992 recognized the actual and potential contribution of indigenous and tribal people s to sustainable development. The *1992 Convention on Bio-diversity* calls on contracting parties to respect traditional indigenous knowledge with regard to the preservation of bio-diversity and its sustainable use. The Vienna Declaration and Program of Action coming out of the 1993 World Conference on Human Rights recognizes the dignity and cultural contributions of indigenous peoples and re-affirms the commitment of the international community to the economic, social and cultural well-being of indigenous peoples.

I. Inter-American Commission on Human Rights (OAS) Proposed American Declaration on the Rights of Indigenous Peoples

The Plan of Action (the “Plan”) signed by the Heads of State and Governments participating in the Second Summit of the Americas in Chile on April 18-19, 1998 assigned greater prominence to the situation of indigenous people. This included a Government commitment to proceed with inter-governmental examination within the Organization of American States (OAS) framework of the “*Proposed American Declaration on the Rights of Indigenous Peoples*” prepared by the Inter-American Commission on Human Rights, with a view toward the possible adoption of a Declaration. The Plan also called for the IDB and other multilateral agencies to provide support for programs and initiatives that are consistent with the goal, objectives and actions proposed in this Plan.

At the XXX OAS General Assembly in June, 2000 in Windsor, Canada, member States adopted a resolution that renewed the mandate of the working group that was considering the Proposed Declaration on the Rights of Indigenous People. A report on this is expected for the XXXI OAS General Assembly/meeting scheduled for Quebec City, Canada in April 2001.

The proposed Declaration is a comprehensive document addressing indigenous peoples’:

- a. human rights entitlement;
- b. cultural development rights;
- c. organizational and political rights;
- d. social, economic and property rights (including rights to land, territories, resources and right to decide on course of development; and
- e. the OAS obligation to promote respect for and full application of the provisions of this Declaration.

²⁵ Establishment of a Permanent Forum on Indigenous Issues, 28 April 2000, E/CN.4/RES/2000/87.

Chile, Colombia, Peru and Venezuela are member States of the OAS.

APPENDIX IV. INSTANCES OF CONFLICT IN RESOURCE DEVELOPMENT

A. Bolivia

President Hugo Banzer announced in March, 2000 that Bolivian natural gas exports will provide \$23 billion in income from gas exports during the next 20 years *and “most of these resources will be invested in social programs.”*²⁶ . Bolivia is viewed as the continent’s second largest gas producer.

A natural gas pipeline, (the “Cuiaba pipeline”), linking Bolivia with Brazil, its most important market, being built by a Bolivian consortium, Transredes, which included Shell Bolivia and U.S. based Enron International, encountered substantial national and international opposition from environmental and indigenous groups. The controversial project that cuts through the Chiquitano, a tropical forest, and traverses some 38 indigenous communities, triggered vociferous protests against a U.S. corporation that was providing financing. It also triggered criticisms of President Clinton himself. The project also raised questions about the efficacy of accountability measures imposed by international lenders – the World Bank and the Bank, on the companies building the pipeline.

The director of Amazon Watch claimed that the Chiquitano forest is *“the largest dry tropical forest left on Earth”*²⁷ . Furthermore, Amazon Watch claimed that the Cuiaba pipeline’s 30-metre right of way would open up the heart of this pristine region *“to uncontrolled exploitation, illegal hunting, logging, poaching and colonization.”*²⁸ Community leaders *“also repeatedly stressed the fear of catastrophic fires that could be accelerated by the right of way serving as a wind corridor... With the fire season one month away, communities expressed worries that there is currently no fire monitoring program or emergency response plan along the right of way.”*²⁹

Communities along the Cuiaba pipeline’s route and environmentalists were concerned that the Transredes consortium would not adequately monitor the pipeline for potential problems.

An ‘independent environmental assessment’³⁰ of the Cuiaba project *“found that the Chiquitano forest is a primary tropical forest of global importance.”*³¹ However, Enron argued that the pipeline was a

²⁶ Associated Press, “Bolivian Government Announces Sharp Increases In Natural Gas Reserves”, March 31, 2000 as found at www.gasandoil.com.

²⁷ Mike Ceasar, “Bolivian Pipeline Break Gushes Oil 30 Hours Unchecked”, *Environment News Service*, February 4, 2000 as found at www.amazonwatch.org.

²⁸ Amazon Watch, “Gas Pipeline (Bolivia -Brazil)” as found at www.amazonwatch.org. accessed August 28, 2000.

²⁹ Friends of the Earth – US Amazon Watch, “July 12, 2000 Letter to OPIC”, July 12, 2000 as found at www.amazonwatch.org.

³⁰ This ‘independent environmental assessment’ was conducted by the World Wildlife Fund, the Missouri botanical Garden, Wildlife Conservation Society, Noel Kempff Museum and Friends of Nature, all of whom later withdrew their opposition to the pipeline route in exchange for \$20 million for conservation projects in the forest. (See James Langman, “Clinton Regime Ripped for Supporting Pipeline; Environmentalists contend project in Bolivia, Brazil Harms Ecosystems”, *The Washington Times*, January 11, 2000 at A10 as found at www.amazonwatch.org.)

³¹ James Langman, “Clinton Regime Ripped for Supporting Pipeline; Environmentalists contend project in Bolivia, Brazil Harms Ecosystems”, *The Washington Times*, January 11, 2000 at A10 as found at www.amazonwatch.org.

*“prudent use of a secondary tropical forest.”*³² Indigenous and non-indigenous communities complained about a lack of consultation on the project.³³

B. Chile

In 1997 the World Bank (International Finance Corporation (“IFC”)) came under fire from indigenous organizations, human rights activists and even parts of the Chilean government, for lending approximately \$70 million for the construction of the Pangué Dam on the Bio-Bio River in Chile. It was alleged that the IFC broke environmental and resettlement rules in lending the money. There was concern on the part of the international institution that the independent report which it commissioned on the alleged scandal would be even more damning than the original complaint that prompted the investigation.

In a second instance involving another dam on the same Bio-Bio river, a Chilean energy company, Endesa, sought to build the Ralco dam. Many Chileans, including President Eduardo Frei, “saw projects like the Ralco dam ... as indispensable elements in Chile’s impressive economic growth.”³⁴ The Frei administration estimated that “upon completion, Ralco would supply almost one-fifth of the energy needs for central Chile, including Santiago, where energy demand is doubling every decade.”³⁵

The Ralco hydroelectric dam proposed to flood a reservoir on the lands of the Pehuenche Indians. Endesa attempted to relocate the Pehuenche Indians since 1996 and spent at least \$20 million. Some families accepted Endesa’s offers, but others were wary of the national government. Chile’s Indigenous Law prohibits the selling of Indian lands, but does allow them to be traded for other land, with the owner’s consent. The Ralco dam situation pitted this law against the country’s general electric service legislation, which permits expropriation in the interest of providing electricity for the general good.

C. Colombia

Colombia currently produces an average of 710,000 barrels, of crude oil per day which generated some \$2.2 billion in the first half of 2000³⁶. However, Colombia’s proven oil reserves have dwindled to 2.3 billion barrels meaning that without new sources of oil Colombia would become a net oil importer by 2005.³⁷ A region of the country designated as the “*Samore block*” represents a significant new source of 2-2.5 billion barrels of oil.³⁸ In 1992, a consortium, operated by Occidental Petroleum and involving Shell and Ecopetrol (the Colombian national oil company), were granted oil exploration rights in the Samore block which is located in the traditional territory of the U’wa people.

The U’wa demanded that the government and the consortium recognize “*their right to refuse or accept oil activity on their land as a precondition to any dialogue about oil development.*”³⁹ The U’wa feared not only the environmental impact of oil development on their health and way of life, but also the

³² IINX via Iinoil, “Enron pipeline through tropical forest faces resistance”, January 19, 2000 as found at www.gasandoil.com.

³³ James Langman, “Clinton Regime Ripped for Supporting Pipeline; Environmentalists contend project in Bolivia, Brazil Harms Ecosystems”, *The Washington Times*, January 11, 2000 at A10 as found at www.amazonwatch.org.

³⁴ Howard LaFranchi, “Indians, Environmentalists Vow Rough Water for Chile Dam”, *Christian Science Monitor*, May 21, 1998 as found at www.csmonitor.com.

³⁵ *Ibid.*

³⁶ Reuters, “US Oil Firm to Drill in Indian – Claimed Colombia Land”, August 18, 2000 as found at www.amazonwatch.org

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Alexander Wostmann, “Broad Pressure on Occidental for Colombian Project”, April 16, 1998 as found at www.gasandoil.com date accessed: August 27, 2000.

likelihood that oil development would bring guerrilla violence.⁴⁰ In 1995, Occidental began seismic exploration in the Samore block in territory claimed by the U'wa . This prompted 500 U'wa to threaten to commit mass suicide if Occidental proceeded with oil development without U'wa consent.⁴¹

Until August 2000, the U'wa had successfully blocked drilling efforts in their traditional territory by recourse to the Colombian courts and through an extensive international protest campaign, (including internet based campaign) that included efforts to embarrass American presidential candidate, Al Gore whose family who is a significant Occidental shareholder).⁴² It also included pressure on Fidelity Investments, Occidental's main shareholder to withdraw support for the development. Shell is in the process of divesting itself from the consortium⁴³ and Occidental has had to abandon its plans to drill in much of the Samore block which is now recognized as official U'wa territory. However, Occidental now plans to drill a test well, in an area claimed by the U'wa as their traditional territory, which has renewed determined resistance⁴⁴.

An OAS/Harvard University Report on the conflict commissioned by the government of Colombia in 1997 entitled "The Samoré Case: Observations and Recommendations" made a number of recommendations. It also arrived at several conclusions. One of them was that the conflict cannot be resolved until the Government of Colombia affords the U'wa a greater opportunity to participate in and influence decisions on the exploitation of petroleum that could affect them.

D. Ecuador

Indigenous peoples represent a third to a half⁴⁵ of Ecuador's population of 12 million.⁴⁶ In 1995, oil revenues accounted for half of the Ecuadorian government's revenues⁴⁷ and oil remains Ecuador's main export.⁴⁸ Resource development and oil extraction in particular, have fuelled many recent conflicts between indigenous peoples, the national government and oil companies.

Since 1972, when the first barrels of oil were extracted in Ecuador, oil development was focused in the Oriente region of Ecuador and was "*dominated by multinational corporations, led by Texaco, until its 1992 departure.*"⁴⁹ According to some reports, "*negligible government oversight and scant attention to*

⁴⁰ "Oil and Violence" as found at <www.moles.org/ProjectUnderground/cno.html> date accessed August 29, 2000. Occidental's Cano Limon pump station and pipeline in Arauca which controls almost one third of Colombia's oil export has been attacked by guerrillas 508 times in the last 11 years.

⁴¹ "Colombian Tribe threaten mass suicide to stop oil exploration", February 1, 1997 as found online <www.gasandoil.com> date accessed: August 27, 2000.

⁴² Industry Standard, "The Internet is changing campaigning", March 30, 2000 as found online <www.gasandoil.com> date accessed: August 27, 2000.

⁴³ Alexander Wostmann, "Broad Pressure on Occidental for Colombian Project", April 16, 1998 as found at www.gasandoil.com date accessed: August 27, 2000.

⁴⁴ Associated Press, "Riot Police Disperse Indians Protesting Oil Exploration", June 24, 2000 as found at www.gasandoil.com date accessed: August 28, 2000.

⁴⁵ Reuters, "A Top Military Chief, An Indian Leader and a former Judge Take Over in Ecuador", January 22, 2000 as found at www.gasandoil.com. This article makes clear that quantifying the indigenous composition of Ecuador's population is a hotly contested issue.

⁴⁶ AP, "Key Facts about Ecuador", January 22, 2000 as found at www.gasandoil.com.

⁴⁷ Chris Jochnick, "Amazon Oil Offensive", *Multinational Monitor*, Vol XVI, No. 1-2 January/February 1995 as found at www.cwis.org/fwdp/Americas/amaznoil.txt

⁴⁸ AP, "Key Facts about Ecuador", January 22, 2000 as found at www.gasandoil.com.

⁴⁹ Chris Jochnick, "Amazon Oil Offensive", *Multinational Monitor*, Vol XVI, No. 1-2 January/February 1995 as found at www.cwis.org/fwdp/Americas/amaznoil.txt

*non-economic concerns*⁵⁰ during Texaco's twenty years of oil development resulted in: the discharge of "4.3 million gallons of toxic wastes ... into the Oriente's environment every day;"⁵¹ the logging of "more than 2 million acres of trees";⁵² and the spilling of "16.8 million gallons of crude oil ... in the Amazon basin contaminating the water supply and the atmosphere."⁵³

Many in Ecuador now accept as a fact that "indigenous Ecuadorians who live in areas of petroleum production suffer a higher incidence of cancer than other groups."⁵⁴ Ecuador's indigenous communities are so distressed by the general manner of oil development that: (1) indigenous communities in the Oriente region of Ecuador are engaged in a lawsuit against Texaco for \$1 billion for contaminating their communities with toxic waste and crude oil⁵⁵; (2) indigenous communities and peasant farmers have descended on the capital to demand a share in Ecuador's growing oil profits⁵⁶; and (3) indigenous protesters have become renowned for their ability to block the nation's highways and shut down the capital.⁵⁷ Finally, indigenous communities demonstrated their extreme displeasure at the national government's handling of resource development and the distribution of wealth that they were instrumental in the recent coup which ousted the president.⁵⁸

E. Venezuela

In Venezuela, the construction of a power line by the state-owned power company, *Corporación Venezolana de Guyana* (CVG), resulted in such significant conflict with the Pemon Indians that construction was suspended in 1999.

The hydroelectric potential of eastern Venezuela's Upper and Lower Caroni Rivers is enormous, representing the equivalent that Venezuelans could earn "from sales of 810,000 barrels of crude oil a day".⁵⁹ CVG plans to send 400-kilowatts of hydroelectricity along the power line from its Guri Dam hydroelectric plant to Boa Vista, a city in Brazil's northern Roraima state.⁶⁰ The development of the power line would also likely open up the area to mining and logging.

The route of the power line is through 150 miles of rainforest and home to the Pemon Indians. The Pemon Indians apparently found out about the project "when the heavy machinery came in".⁶¹ The Pemons soon tired of protesting the power line with letters and resorted to sabotaging the power line, and

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Catherine Elton, "Environmentalists Worry Ecuador Will Drill for Dollars", *Christian Science Monitor*, February 4, 2000 as found at www.csmonitor.com.

⁵³ *Ibid.*

⁵⁴ IINX via Iinoil, "Indigenous Ecuadorians Near Petroleum Production Suffer More of Cancer", July 27, 1999 as found at www.gasandoil.com.

⁵⁵ The government of Ecuador joined the indigenous communities in this suit in 1996 against Texaco. Texaco's efforts to quash the proceeding have so far failed. Catherine Elton, "Environmentalists Worry Ecuador Will Drill for Dollars", *Christian Science Monitor*, February 4, 2000 as found at www.csmonitor.com.

⁵⁶ Associated Press, "Ecuador's Indians Seeking Share in Oil Revenues", November 23, 1999 as found at www.gasandoil.com

⁵⁷ Catherine Elton, "Coup is Over, but Ecuador's Indians Aren't Going Away", January 26, 2000 as found at www.csmonitor.com

⁵⁸ Reuters, "A top military chief, an Indian leader and a former judge take over in Ecuador", January 22, 2000 as found at www.gasandoil.com date accessed: August 27, 2000.

⁵⁹ Tim Johnson, "Energy projects opposed", *Miami Herald*, November 18, 1999 as found at www.amazonwatch.com.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

obstructing traffic and construction crews along the Venezuelan-Brazil highway.⁶² In October 1999, Pemon Indians toppled four of the power line's electrical towers and were swiftly surrounded by 200 members of the Venezuelan National Guard.⁶³

F. Conclusion

All the foregoing instances of conflict indicate that across Latin America, numerous indigenous groups are challenging governments and companies over resource projects on or near their lands. They also illustrate the power of indigenous and non-indigenous groups to invoke international censure against governments and financial institutions supporting projects that pose a risk to the environment and to indigenous communities.

APPENDIX V. BANK OPERATIONS IN SUPPORT OF INDIGENOUS PEOPLES

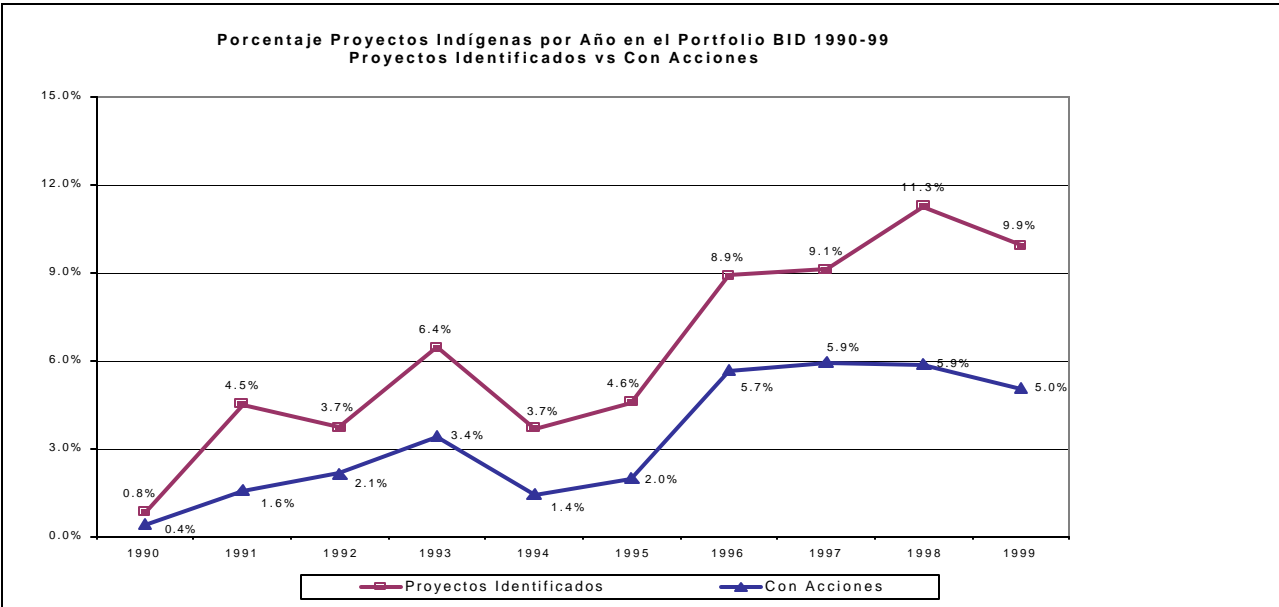
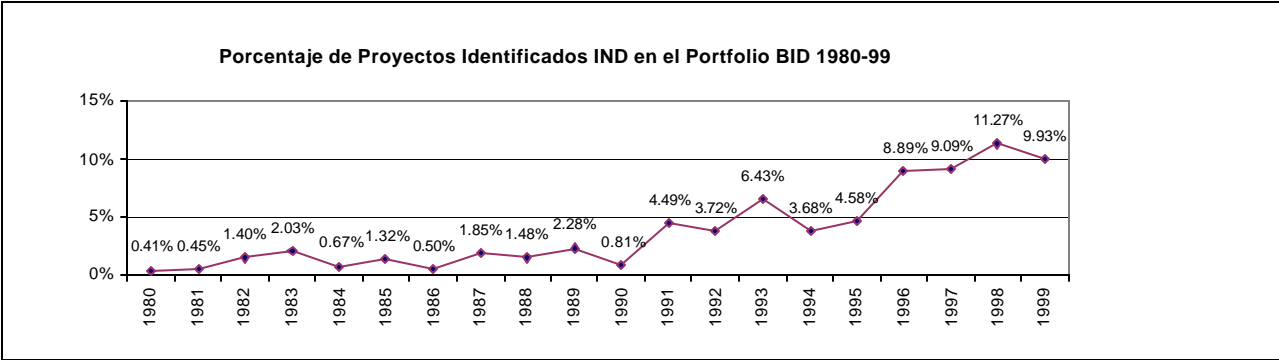
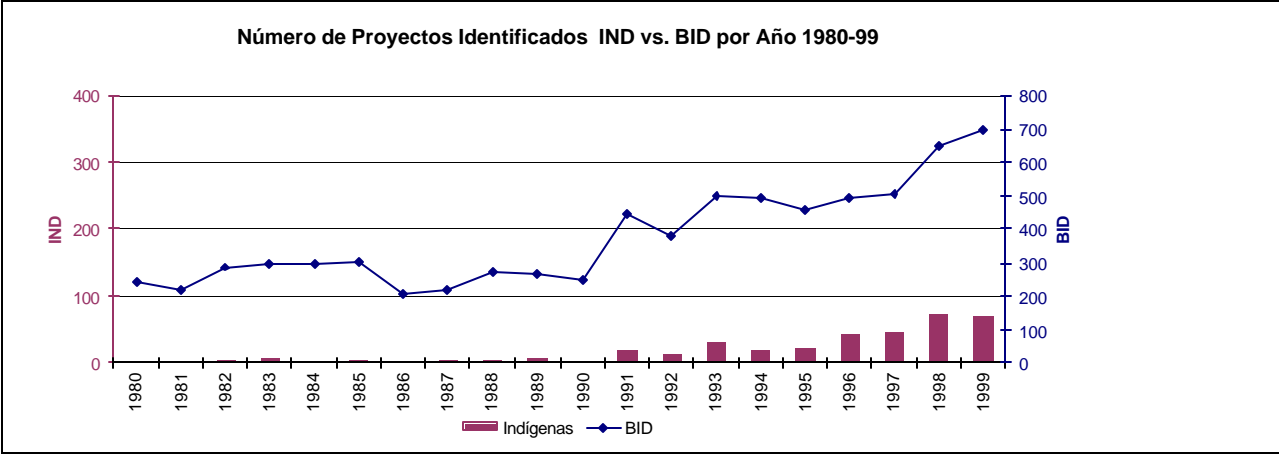
The 1994 policy mandate accompanying the Eight Replenishment of the Bank's resources, for the first time, addressed indigenous issues as part of the agenda on poverty reduction and social equity, and not only in the context of environmental mitigation. This mandate has resulted in a significant increase of Bank operations addressing indigenous needs and concerns. In 1998 more than 11% of all Bank operations included specific mention of indigenous people and more than half of these operations included in their project design ethno – specific measures to reduce access barriers, improve targeting or promote socio-cultural appropriateness.

On average between 1990 and 1999, 6,98% of the Bank's portfolio of projects impacted on or contained specific activities for indigenous peoples.⁶⁴ In the eighties, the number of those programs remained constant, but from 1991 on, there was a significant increase, culminating in 1998. However, the share of projects that contained specific activities for indigenous peoples averaged 3,34% of the Bank's portfolio over the nineties.

⁶² Celia Alario, "Venezuelan Ministers of Defense and Environment Bring Delegation to Gran Sabana for Meeting with Indian Protesters", October 6, 1999 as found at www.amazonwatch.com.

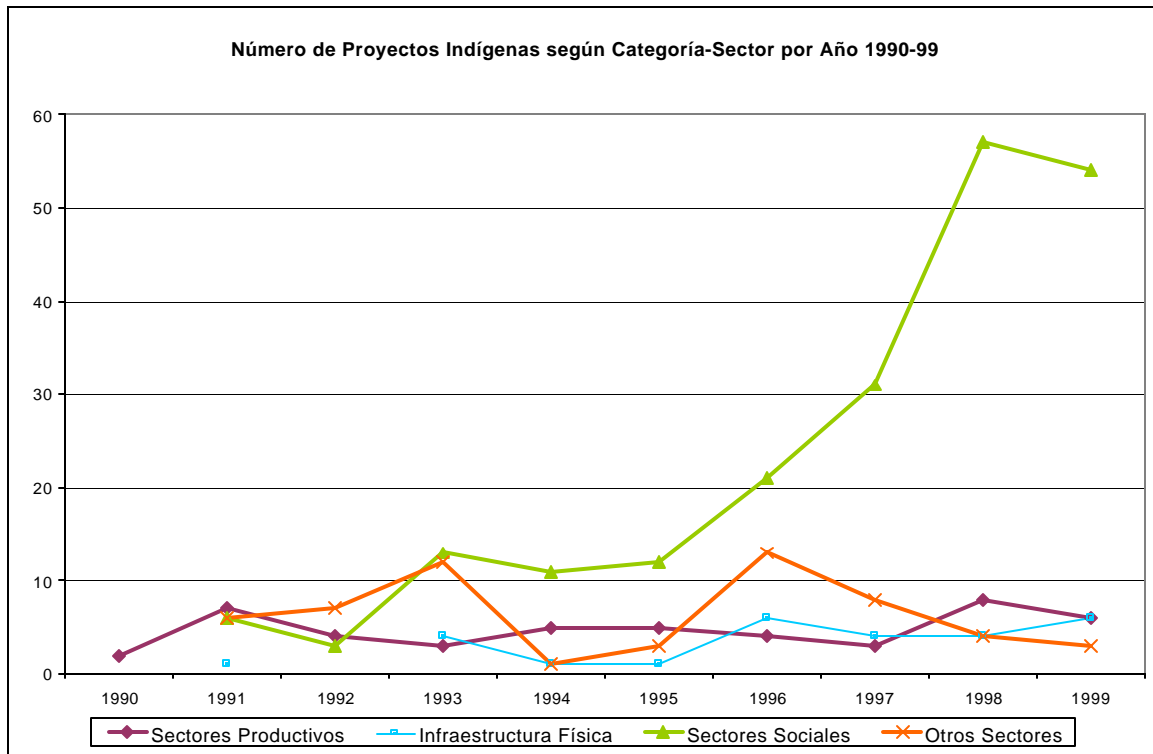
⁶³ *Ibid.*

⁶⁴ The statistics on the Bank's portfolio of projects were provided by the Bank's Indigenous Peoples and Community Development Unit. Between 1980-99, the share of projects that contained activities for indigenous peoples or affected them within the Bank's portfolio averaged 1,27%.



Between 1990 and 1999, the IDB approved 221 projects that affected, directly or indirectly, or benefited indigenous peoples. Out of those 221 projects, 159 involved ethno-specific actions⁶⁵ for indigenous peoples. 62 projects did not include any activities directed at indigenous peoples despite them being affected by the project.

Most of the increase of projects that identified indigenous peoples as affected or beneficiaries happened in social sectors. Those projects rose sharply since 1995, one-year after the Eight Replenishment. Between 1990 and 1999, 61% of all projects were in social sectors, 14% in productive sectors, 8% in infrastructure, and 17% in other sectors.⁶⁶



With economic growth that extends oil and gas development further into more remote areas of the Andean/Amazon Basin region, and greater international concern for indigenous peoples issues, and sustainable development it can be expected that the Bank will be involved in an ever increasing number of projects affecting indigenous peoples and the environment. This Initiative would permit the Bank to gain added operational strengths in indigenous economic, social and environmental development in the Andean/Amazon Basin region.

⁶⁵ 95 projects entailed one or several activities, 21 programs had one component for indigenous peoples, and 43 projects were specifically targeted in its activities to indigenous peoples.

⁶⁶ Productive sectors include agriculture, fishing, industry, mining and tourism. The infrastructure sector encompasses energy, transport and communications. Other sectors involve public sector reform, finance of exports and others.

APPENDIX VI. CANADIAN GOVERNMENT PROGRAMS FOR ABORIGINAL AND INUIT PEOPLE

A. Resource Access Negotiations Program (RAN)

The Lands and Trust Services sector of the federal Department of Indian and Northern Affairs ("DIAND") administers the RAN program whose objective it is to help First Nations and Inuit communities negotiate bilateral benefit agreements with governments or the private sector relating to resource developments. Although relatively small, RAN is viewed by First Nation participants as having a significant impact on the benefits for First Nations from natural resources and resource development. The benefits include, agreements with provincial governments and the private sector regarding the joint management of natural resources, business development for First Nation enterprises and training and employment for First Nation members.

The activities that are supported under RAN include, the development of community negotiating plans and positions for access to develop and manage natural resources off- reserve lands; negotiation of the sale, lease or other disposition of, or private investment in, community controlled natural resources; and the conduct of negotiations and drafting and finalizing agreements.

Current government funding is set at \$8.3 million dollars.⁶⁷ However, participants are expected to commit their own financial and human resources to the maximum extent of their capacity. Most of the contributions under the program are used to support projects related to resource co-management, forestry, major off-reserve lands resource developments and mineral development. Other resource development sectors include hydroelectric development and oil and gas development. It is a condition of every initiative funded under RAN that the applicant agrees to report on activities carried out and benefits generated.

B. Resource Partnerships Program (RPP)

The RPP assists First Nation and Inuit communities, organizations and community-owned and controlled enterprises to participate in, and obtain economic benefits from the planning and implementation of large-scale resource development projects involving the private sector, federal and provincial governments and other stakeholders. Typically, support is provided for participation in multi-party project coordinating bodies, research and consultations, the development of joint work plans and implementation of joint initiatives to increase aboriginal participation and benefits. Current funding is \$9.5 million dollars.⁶⁸ The RPP co-funds activities leading to the creation of a "Joint Working Agreement" and early implementation of the agreement. This includes:

- strategic planning (partnerships opportunity identification, consensus building, priority setting);
- participation in government-industry collaborative planning and implementation mechanisms;
- negotiations with private sector and/or a province/territory for a joint working agreement leading to increased participation in a major resource development;
- project feasibility studies;
- human resources and skills training needs analysis and planning; environmental impact assessment and business plans.

⁶⁷ INAC web site http://www.inac.gc.ca/nr/prs/m-a2000/00139bk_e.html . Web update as of 8/24/00).

⁶⁸ INAC web site, as of 2000-06-21

The program does not fund workforce training, infrastructure development or capital costs associated with a project.

The projects covered by the RPP must be related to large-scale resource developments in the areas of mining, forestry, energy development, resource-based tourism, fisheries or agriculture. Priority is given to projects that are considered to have regional impact and a wide range of benefits, including employment and small business development to a number of First Nation, Inuit and Innu peoples. Total government funding under the RPP cannot exceed 50% of the total cost of eligible activities, with the exception of early strategic planning. Leverage of private sector and/or provincial territorial government funding or “*services in kind*” is a key eligibility criterion. For early project strategic planning only (before negotiations of a Joint Working Agreement) the program will fund up to 90% of cost, and cost-sharing by a province/territory and developer(s) is not mandatory. The recipient is required to fund at least 10% of the costs.

The program may provide phased funding over several years to a project. Upon demonstration of satisfactory completion of a phase of the project an applicant can apply for funding for further eligible activities. It is a condition of every initiative funded under the RPP that the applicant reports on activities carried out, benefits generated and objectives achieved. Project renewal requires positive reported results of the previous project phase.

C. Westbank First Nation Consultation/Capacity-Building Funding

The Westbank First Nation and the governments of British Columbia and Canada (INAC) signed a Letter of Understanding in August 2000 that will increase Westbank’s involvement in the forestry sector. This was done in an effort to have the parties return to treaty negotiations.⁶⁹ The agreement also suspended the lawsuit initiated by Westbank. Under the terms of the Letter of Understanding, the federal and provincial governments will provide Westbank with \$300,000 to work towards consultation and forestry-related capacity building. As part of the interim measures agreement, the province will work in co-operation with the local forest industry in order to re-allocate existing fiber to the Westbank First Nation.

D. Aboriginal Pipeline Group-Mackenzie Valley Pipeline Proposal

The dramatic upswing in demand for natural gas and oil in North American markets has triggered a race among gas producers and pipeline companies to build a pipeline to carry the resource from Canada's north (the last undeveloped reserves in North America) to gas markets in the United States. First Nation leaders in the Northwest Territories living along one of the possible routes for a proposed natural gas pipeline down the Mackenzie Valley have formed a group, the Aboriginal Pipeline Group, (APG) to study how much of the project they want to own and participate in. Along with ownership and benefits from the project, the committee is studying how much cash and financing the various aboriginal bands along the route can contribute. This is the first time since the 1970s that all northern aboriginal groups have met to discuss pipeline developments.

APG expects the governments of the Northwest Territories and Canada to jointly fund the committee's work- a cost of about \$1 million dollars. The committee is expected to determine issues including equity stakes for First Nation groups in the pipeline project, employment and training agreements, and other business benefits.

⁶⁹ Indian and Northern Affairs, “Agreements Signed with West Bank”, *New Release 2-00157* (May 5, 2000) online:< http://www.inac.gc.ca/nr/prs/m-a2000/2-00157_e.html > (date accessed: 29 August 2000).

There is as of yet no confirmation of this financing. However, DIAND is committed to the venture, the formal proposal of which has yet to be formally submitted to the government.⁷⁰

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⁷⁰ Lise Gagnon, Communications Officer of DIAND Communications Directorate, NWT, confirmed in a telephone conversation (1 September 2000) that the funding has not yet been officially approved.