

# Human Rights, Indigenous Rights and the Extractive Industry Workshop Report

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Calgary, Canada  
28 June 2007

*Hosted by:*

**nexen** 

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## Introduction

IPIECA's Social Responsibility Working Group organized the *Indigenous Rights, Human Rights and the Extractive Industry Workshop* on 28th June 2007, generously hosted in Calgary, Canada by Nexen. This was the third IPIECA workshop on the theme of human rights. Workshop participants heard from a wide range of perspectives on indigenous rights throughout the day. Guest speakers Leroy Little Bear, Pat Ruby and Richard Glenn provided Canadian and Alaskan viewpoints, and Craig Benjamin, Lee Swepston and Lynn Sicade presented on international perspectives. Following presentations from guest speakers, the afternoon centered around discussions on a combination of real and hypothetical scenarios highlighting specific issues arising from the interactions between indigenous peoples in North America and the oil and gas industry. Participants were able to draw on their own experiences, discussing successes and difficulties, and highlighting key points to consider and ways forward in often sensitive situations. A full agenda and speaker biographies are included as appendices.

### The objectives of the workshop were to:

- Gain a better understanding of "indigenous" rights and different cultures;
- Explore contemporary legal issues related to indigenous rights;
- Discuss the relationship between indigenous communities, land rights, and the extractive industry in North America; and,
- Provide a forum for attendees to discuss the challenges and solutions to a variety of scenarios.

This report highlights the key messages raised by speakers throughout the workshop and seeks to give a synopsis of the presentations, panel discussions and question and answer sessions. It also includes the scenarios discussed and the corresponding options presented by the break-out groups to the attendees.

## Background

IPIECA (International Petroleum Industry Environment Conservation Association) was founded in 1974 to address key environmental and social issues and liaise between the oil and gas industry and the United Nations (UN). The Social Responsibility Working Group (SRWG) was started in 2002, to address various social issues including capacity building, community outreach, and human rights. Human rights, in particular, have been a focus of the SRWG's work, since the oil and gas industry operates in some of the most challenging places in the world and can face complex human rights issues.

There are important intersections between business and human rights to consider, including: "doing the right thing"; risk management; access to resources; productive community relations; legal implications/shareholder resolutions; socially responsible investing; and, employee recruitment/retention/morale. Recognising the importance of this issue, IPIECA members are addressing human rights both as individual companies and collectively as an industry. One such example is the recent development of the IPIECA Human Rights Training Toolkit in 2006.

SRWG members invested 18 months developing and sharing expertise and practices on business and human rights, which culminated in the publication of the Human Rights Training Toolkit for the oil and gas industry. The Toolkit is available to download from: [http://www.ipieca.org/activities/social/social\\_publications.php](http://www.ipieca.org/activities/social/social_publications.php)

The Toolkit provides managers with a template that can be used and adapted to conform to a company's policy or position on human rights and applicable domestic laws and regulations. The Toolkit also provides assistance in developing or enhancing existing company policy.

## **History and Future of Workshops**

The working group decided to hold several regional workshops to raise awareness of human rights issues for the oil and gas industry and publicise the Toolkit. The first workshop in London was a working session to share the then-draft Toolkit with company representatives and stakeholders from the expert human rights community and gather feedback for improvement. The second workshop in Kuala Lumpur brought together experts from academia, business, governments, and international and nongovernmental organizations to consider the “Asian perspective” on human rights and the extractive industry. The third workshop in Calgary addressed indigenous rights in North America, and is covered in this workshop report. Further workshops will be held in South America in 2008 and Africa in 2009.

## **Acknowledgements**

This workshop would not have been possible without the time and effort of Jeff Flood, Jim Shaw and Fiona Buchanan of Nexen. Thank you to all of the expert speakers and workshop attendees for their important contribution to the success of this workshop. Additionally, thank you to the IPIECA Human Rights Task Force for their assistance in planning the workshop.

*A special thank you to Clarence Wolf Leg Senior for opening the workshop with an Aboriginal prayer.*

## Key Messages

The workshop covered a range of issues. During the workshop, guest speakers raised some key points and themes regarding indigenous peoples and/or their interaction with extractive industries.

### A Need for Indigenous Rights – *Leroy Little Bear*

- **Indigenous cultural history** – Globally, indigenous peoples’ relationship with the land is a central part of their cultural traditions, livelihoods, and heritage. Indigenous peoples often see themselves as “stewards of the land”.
- **Fundamental need to understand differing cultural paradigms** – A comparison of fundamental aspects of western culture and Native American culture, in particular, highlight the basic underlying cultural differences. Issues were raised over cultural boundaries (or lack thereof) and whether indigenous land rights should be inherently recognised.
- **Land rights** – It is essential to demarcate indigenous territory and to respect indigenous lifestyles. Land rights can protect indigenous communities from overexploitation of their lands and the natural resources contained within. These resources have, in the past and still today, led to conflict and death.
- **Land claims** – Often indigenous land claims are not centrally about economic rights, but instead about the better understanding of traditional lands as being sacred and about gaining the legal rights to continued uninhibited and undisturbed access or at least to consultation.

### Indigenous Rights movement – *Craig Benjamin (Amnesty International Canada)*

- **Indigenous peoples are some of the most vulnerable**, impoverished, marginalized and victimized inhabitants of the earth
- **Progress with indigenous land rights through the Indigenous Rights Movement** – Today rights are being affirmed and protected in common laws, treaties, national constitutions, and regional and international human rights instruments
- **Legal Issues and Indigenous Rights** – Promoting land rights for indigenous peoples through legal mechanisms is becoming a more common trend.

### North American trends - *Canada & Alaska – panel of Pat Ruby and Richard Glenn*

- **Weakened land claims** – Dispersed and diverse aboriginal population can weaken land claims and leadership opportunities
- **Major positive changes in the last 30 years:**
  - Communities better informed, more business savvy
  - Companies seek to achieve good relationships through extensive consultation programs, increased community input, and social and economic projects
- **Local engagement** – Successful projects require the building of local knowledge and community input into business planning
- **Native Alaskan representation** – The ANCSA (Alaskan Natives Claims Settlement Act) enabled native Alaskans to have “a seat at the table”.
- **“Walking in both worlds”** – One challenge for indigenous peoples is reconciling tradition with economic empowerment. The concept of walking in two worlds signifies trying to maintain cultural values and heritage while engaging on a competitive level with extractive industry, for example through native corporations. This is a difficult balance to achieve.
- **Positive impact of oil revenues both direct and indirect in Alaska’s North Slope** – Engagement with oil industry by North Slope communities on many different layers (tribal, village, and regional) has had positive impacts,

especially the Borough-generated tax on oil development that has funded the creation of sustainable social investment projects such as education, etc.

- **Marine Rights** – Marine issues becoming more common in Alaska with oil exploration offshore threatening fragile ecosystem and potential to have impact on coastal communities.
- **Partnerships** – Essential for both communities and companies to work together in open dialogue to maximize economic and social opportunities from natural resources and create sustainable successful development projects.
- **Embracing Change** – Indigenous communities need to be proactive in engaging with companies so that they benefit from the resource wealth and are able to bring their issues as priorities in projects. The alternative is not engaging and consequently not being involved in decision-making.

### **International law on Indigenous Rights and emerging trends – *panel of Lee Swepston and Lynn Sicade***

- **International human rights law has a direct relationship with business** – Understanding human rights law therefore forms an Integral part of companies' CSR policies.
- **Indigenous Rights are distinctive from Human Rights** – Indigenous rights are unique as they go beyond the fundamental human rights applicable to all individuals. They are collective rights granted to enable indigenous peoples to continue their distinct traditional lifestyles. Indigenous rights are established to support indigenous peoples' self-determination and their freedom to make decisions on issues such as management of land which they traditionally occupy, resources, education, judicial and law enforcement.
- **Vulnerability of indigenous peoples** – Fundamental social, economic, political vulnerability still exists today for indigenous peoples across the globe. A majority of governments have not yet agreed to ratify and/or implement international conventions to protect indigenous rights.
- **Difficulties in finding "true" representatives** for indigenous communities.
- **State authority over land and resources wavering** – State management of resources has often overlooked indigenous rights and indigenous peoples' needs. A new trend is for international mechanisms to hold states responsible for allowing mining, logging, etc in indigenous territory where it might negatively impact those communities' rights. Implications for companies are significant, as entering into agreements with the state will require ensuring that free, prior and informed consultation with affected communities take place prior to any extractive activities.

# Presentation Highlights & Discussion Points

## *This Land Is My Land*

Leroy Little Bear

### Introduction

Leroy Little Bear, a Blackfoot and former professor of Native American Studies at the University of Lethbridge in Canada, opened the workshop by posing two questions to the group: Why is there a need for indigenous rights? Why do we have to create instruments to protect indigenous rights - on an international or national level? He reflected upon these questions while offering a perspective on history and different cultural boundaries, and the need for indigenous rights as a way to protect land and peoples' relationship to it.

### Cultural history and boundaries

A key point to consider when answering these questions is to understand the juxtaposition of cultural values between the western and Native American cultures which have very different origins. In North America, one can see the direct contrast between Native Americans' close familial relationship with land and animals and the English settlers' belief that plentiful land and resources were free for occupation and consumption. To understand the opposing viewpoints, it is necessary to see the development of the two cultures' relationship with land.

The development of English civilization is complex and has many layers. The island of England was invaded by many different peoples, and it can be claimed that during the tumultuous changing of hands, almost everything indigenous to English culture was diluted or has since disappeared. This was particularly evident when Christianity dominated and suppressed the native Druid religions. English civilization became distanced from indigenous culture and the English culture began to build on values oriented towards the individual and early forms of capitalism. This distinct lack of attachment to land and place is what Leroy classifies as "thin cultural boundaries" - a way of life with very little boundaries or restraints. Thus when the English settlers first arrived in North America, they believed that everything - land, animals and resources - was "free for the taking".

In contrast, the many diverse indigenous tribes in North America practiced, and still continue to practice, a very different philosophy and way of life. Indigenous peoples respect the land and animals that they need to survive and view themselves as stewards of the land. Blackfoot philosophy, for example, is holistic, cyclical, group-oriented and spatial while western philosophy is very linear, hierarchical, dichotomous, singular and time-oriented. In Blackfoot thinking, everything is animate including trees and rocks. Land, animals and people are interlinked in symbiotic relationships, building strong cultural boundaries. Native Americans see the land as part of their heritage and everyday life; western mentality views land and its resources as inanimate and for the inherent benefit of man. In hierarchical terms, to westerners man is at the top of the food chain but in contrast, to Native Americans, trees and animals hold a higher status. And these beliefs that infiltrate all aspects of life for the two cultures, led the expansion-oriented settlers to carve up North America into land for individuals, while the Native Americans still today fight, through land claims, to protect that land which is so close to their hearts.

### Conclusion

When two very different cultures meet with varying cultural boundaries - the need for land rights arises. When there are no boundaries, rights are needed to give definition, respect and continued access for the indigenous peoples who inhabit the land. As Leroy stated: *"The reality is that our [Native American] ties to the land are being disturbed"*. However, the recognition of land rights for many indigenous peoples such as the Native Americans has only been a recent phenomenon.

The clash between cultures means that indigenous peoples have to use channels of land claims and initiatives on national and international levels to protect their relationship to the land. Corporations were once of the mindset that resources were free for the taking, but now realize that there is a need to be socially conscious and to promote indigenous rights to lands and resources. There is a common misconception that land claims are purely economically driven, but in reality they are more inherently about protecting culture, protecting ways of life. For Native Americans and other indigenous peoples across the globe, the ties to the land are inherently sacred and part of their lifestyle.

Instruments such as the Declaration of the Rights of Indigenous Peoples and land claims are about protecting a way of life with strong cultural boundaries. Clarence Wolf Legs opened with a prayer about the strength of creatures such as eagles and bears who have not changed since the beginning. Humans are different because they are susceptible to changes and easily succumb to life without boundaries. So Clarence's prayer was for success in bringing about international instruments to protect land for humans who are not like the eagle and bear, and to enable the continuation of Blackfoot culture.

## Discussion Points

### On traditional use vs. abuse of land and resources

There is a common misconception that all use of land and resources contributes to ecological problems. This has led to such restrictions being imposed on indigenous people such as bans on whale hunting, fishing, living in "protected areas" or other restrictions on carrying out traditional livelihoods and customs. These bans and restrictions have devastating effects on indigenous peoples, who often rely on these activities for physical sustenance or for cultural purposes. Far from being an abuse of the environment, most indigenous cultures take great care to respect the land and resources that they use in their everyday life. There is an unspoken social contract between land, animals and people, and the relationship is conducted with reciprocity, balance and respect. One illustration of this point is the abundance of ceremonies, which are one manifestation of indigenous peoples' commitment to honoring those foods, animals and other parts of nature that they use. This is a relationship of coexistence and respect, where indigenous peoples view themselves as the stewards of the land. This clarification is important for consideration when conservation issues are being debated.

## A Rights-based Approach To Land & Resources

Craig Benjamin (Amnesty International Canada)

### Introduction

Building on Leroy Little Bear's aboriginal perspective on land and relationships, Craig Benjamin set out the main elements of a rights-based approach to land and resources from the perspective of Amnesty International, a non-governmental organization (NGO).

### Indigenous Rights Struggle

There are an estimated 375 million indigenous peoples worldwide who range in enormous diversity. Yet despite being so diverse, many still have a common experience of a history of violence, suppression of cultural identity and appropriation of land. Across the world, indigenous peoples are among the most impoverished, marginalized and victimized. However, an international indigenous rights movement has been gaining momentum over the last several decades. This movement is raising the awareness of the international community to the plight of indigenous peoples and providing a forum for those peoples who often do not have access to policy-makers or financial resources.

There are four key elements related to the indigenous rights movement:

- There is a "distinctiveness" of indigenous cultures and these cultures should be protected by core human rights values: equality of people; prohibition of discrimination; protection against genocide and forced assimilation; and, the rights to maintain their culture and identity.
- Indigenous peoples have the right to seek self-determination as specified in international human rights covenants and laws.
- Indigenous peoples are vulnerable due to the historic and ongoing issues related to their basic rights.
- Land, territory and natural resources are central to indigenous peoples' way of life, and the protection of these is integral to their enjoyment of rights to culture and identity, health, livelihoods, food and education.

These elements together make it essential that indigenous rights are protected.

### Progress towards indigenous land rights

Although in the past there has been reluctance to recognize indigenous rights to lands and resources, today, rights are affirmed and protected in various common law, treaties, national constitutions, and regional and international human rights

instruments. A brief overview of the main international instruments to protect indigenous rights identified the UNDRIP (UN Declaration on the Rights of Indigenous Peoples) and ILO (International Labour Organisation) 169. Additionally, there has been progressive development in the attitude of some national legal systems. In 1982, the Alberta Court (Canada) determined against claims of an indigenous community seeking to stop resource development on their land. In its ruling, the court placed almost no value on Indigenous land use activities, especially compared to the wealth that could be generated through resource extraction. In contrast, concluding a more recent injunction hearing in 2006, the Ontario Supreme Court (Canada) stated that: *"The land is the very essence of their being. It is their very heart and soul. No amount of money can compensate for its loss."* This sea change highlights the evolving mindset in Canada, and internationally, that indigenous peoples' rights to land and resources are distinct and significant.

## Conclusion

Craig finished his presentation by highlighting the relevance of understanding indigenous rights for the extractive industry. The example of the Lubicon Cree emphasizes the importance for the oil and gas industry to be aware of and respect indigenous rights. In the 1970s, oil and gas exploration led to development projects on Lubicon Cree territory in northern Alberta, Canada. As the Lubicon Cree's traditional lands were not protected by treaty or recognized by the government, there were no boundaries or legal requirements for the oil and gas companies to follow and no authority by the government was exercised to protect the Cree's rights. The unchecked development caused disruption to traditional way of life. Today the Lubicon are still fighting an embittered land dispute, and over 90% of the community now lives in poverty. Recognizing now that governments do not necessarily fully protect human rights, as seen in this case, companies are aware of and act upon measures to promote indigenous rights to prevent the tragic situation of the Lubicon Cree. There is potential for corporate activity to impact on basic human rights, especially where state laws and regulations do not support human rights obligations and indigenous rights. And internationally there is an obligation of all society, including business and the industry, to respect, uphold and promote the highest standard of human rights.

## *The Interface With The Extractive Industry*

Pat Ruby (PM Consulting Ltd)

Richard Glenn (ASRC - Arctic Slope Regional Corporation)

## Introduction

Pat Ruby and Richard Glenn addressed the challenges and their experiences in reconciling traditional ways of life and cultural connections to the land with the development of natural resources in North America.

## *Change, Challenge & Connection*

Pat Ruby

## Introduction

Pat is a consultant specializing in participatory governance, socio-economics, conflict resolution and public engagement, who has worked with extractive companies in Canada's north for thirty years, as well as internationally.

## The Setting

Major demographic changes have taken place over the last three generations, including during the past three decades of Pat's northern work. Today, Aboriginal people represent only 3% of Canada's national population. A 2001 census map shows that aboriginal people now represent the majority only in census districts in the northern portions of the western Provinces and northern Territories – but this still represents about half of Canada's total geographic area. Some of the changes and related challenges facing both Aboriginal communities and the extractive industry in Canada are explored here.

## Aboriginal Communities: Changes & Challenges

For many aboriginal communities, human resources are stretched thin and gaining access to decision-making bodies is difficult. Fundamental social, health and education challenges still exist within many aboriginal communities. Legal processes for settling land claims are complicated and slow. Many communities are located far from government and industry decision-makers in the major cities. Leaders and communities seeking to address rights issues can find it challenging to effectively

voice their concerns to decision-makers with different cultural perspectives, values and priorities. Communities are challenged to develop leaders who are willing and able to tackle these logistic and cultural hurdles, as well as the complexities of longstanding, unresolved social, environmental, economic and legal issues and claims.

Despite these challenges, some Aboriginal communities are taking advantage of opportunities when the extractive industry seeks to develop resources nearby. Aboriginal communities today approach business with the oil and gas industry very differently than they did during earlier encounters with exploration and production. Having learned from past negotiations and experience, many communities have developed an informed and professional approach to setting out expectations for companies. Aboriginal corporations include skilled negotiators with savvy business sense, and leaders who are able to combine members of the internet generation's access to information with community members' experience working with large companies. Many communities now propose formal agreements about resource extraction on their traditional lands, including provisions for Aboriginal participation. This reflects a different picture from thirty years ago.

## **Extractive Industry: Changes & Challenges**

Oil and gas and mining companies have also experienced a variety of changes over the past thirty years. Some examples include an increased focus on environmental protection; development of unconventional and more remote resources; global and functional restructuring; the rise of the internet; changing demographics; and working within more complex legal frameworks and more time-consuming regulatory processes. Certainly, the way that the oil and gas and mining industries approach the interface with indigenous communities has changed over the last three decades. Many companies have recognized the importance of engaging and developing relationships with communities, and otherwise adapting operating practices. However, some of these practices represent only "the tip of the iceberg": appreciating the underlying community and cultural values, beliefs, and the centrality of land to aboriginal communities is critical to developing effective working relationships. Corporations' functional structures and reporting lines continue to pose challenges to negotiating and working with small land-based communities, as does the cross-cultural understanding of senior employees long-entrenched within their own corporate cultures. Improved and extensive consultation programs and agreements with aboriginal communities, cross-cultural training of industry management as well as field staff, and corporate support for programs to enhance readiness for employment and other economic opportunities in Aboriginal communities, including education, training, work experience and small business programs: these are examples of positive change.

## **Conclusion**

Through recognizing these changes and challenges, the interface between the extractive industry and aboriginal communities can be better understood and more effectively approached. Pat emphasized that attempting to understand these histories and complex relationships can support meaningful engagement. Communities are gaining increased competency in entering business relationships with companies. Extractive companies are recognizing that they can have a constructive and beneficial connection with indigenous communities and businesses. Industry and communities can engage constructively for mutual benefit. And this, Pat emphasizes, is what people like herself strive to integrate into business planning: that a focus on mutual understanding and mutual benefit supports strengthened relationships, integrated business efforts, reduced risk and mutual success.

## ***Examination of Successful Collaborations in Oil, Gas & Mineral Developments: One Corporation's Perspective with respect to Human Indigenous Rights***

**Richard Glenn**

## **Introduction**

Richard Glenn is the Vice-President of Lands for the ASRC (Arctic Slope Regional Corporation). He offered his perspective as a native Alaskan and as a businessman working within the oil and gas industry, starting with an introduction to indigenous rights in Alaska.

## Indigenous rights in Alaska

The Inupiat, indigenous peoples of the North Slope region in Alaska, are no strangers to resource development, having used oil seeps, coal, gas and the living resources of the land and sea to sustain generations of people. This relationship with the land has formed Inupiat culture and values, and continues to help the development of the people. Yet the Inupiat, like many indigenous peoples worldwide, have had to fight for land ownership and rights to resources.

The discovery of massive oil resources in Prudhoe Bay off the Arctic coast in 1968 was the turning point for the virtual isolation of the people on the North Slope. Although commercial whaling in the 19th century had brought whalers and missionaries to the tribes in the North Slope, the area did not offer much resource-wise to outsiders until the discovery of oil, which promised to be far more invasive. It brought an intense national focus on the North Slope, as state, federal and private interests vied to exploit the oil resources. The discovery of oil posed a great threat to Inupiat culture and way of life. Although tribe and federal recognition existed for many decades before the Prudhoe Bay discovery, still many issues of land rights persisted. So the Inupiat on the North Slope brought issues of land ownership and rights to the forefront of development deliberations and heightened lobbying of the government to settle the many outstanding land claims before oil development went ahead.

## ANCSA

The federal government enacted the ANCSA (Alaska Native Claims Settlement Act) in 1971, to effectively settle all land claims of the Inupiat and all other indigenous groups across Alaska and pave the way for development of the huge petroleum reserves in the North Slope. The goal of the Act was to put to rest all of the various land claims put forward by the Inupiat, and for all indigenous groups across Alaska, by offering land rights and money in compensation for relinquishing the land claims. The Act also expanded traditional concepts of land and resource utilization to include concepts of corporate land ownership. To support this mandate, the Act established 12 regional native corporations (and one for Alaskans living out of state at the time). The ASRC (Arctic Slope Regional Corporation) was created for the communities living in the North Slope. These native-led regional corporations were mandated as for-profit organizations, which were entitled to select a discrete amount of land in their region and to develop that land in order to bring economic benefits to the corporation's shareholders.

Although the land claim for the ASRC spanned the whole North Slope, some 50 million acres, the federal government settled the land claim by granting title to 5 million acres and including a monetary compensation package. This land and compensation offered the ASRC, and the people that it represented, an opportunity to "walk in two worlds"; it was an opportunity to make the best of the extractive industries whilst holding onto core Inupiat values as a native-led organization.

The result of the ANCSA was significant in the North Slope, particularly with regard to sharing oil revenues. The settlement from the Act was divided among regional, urban and village corporations, which highlighted the complex onion-skin layering of the society's organizations. This multi-tiered society is seen in the North Slope - from the governing regional political body - the North Slope Borough (NSB) municipality, to the ASRC, to newly created village corporations, to individual tribal communities.

The major impact of the ANCSA was enabling native Alaskans to "have a seat at the table". The subsequent economic empowerment of the regional corporations provided strong drivers for the state and the people to develop corporate enterprise. This drive filtered down to the local level, giving communities opportunities to be pro-active in development mitigation through village corporations and tribal mechanisms. In the North Slope, economic empowerment via Borough-generated taxes on oil field infrastructure led to an improved quality of life for the communities, as the tax money helped develop schools, search and rescue teams, cultural programs, and more. Additionally, the NSB (North Slope Borough) municipality empowered the Inupiat to control external influences on their community and manage industry development on a level playing field. And the ASRC, in addition to developing land and resources, has also created subsidiary companies with expertise in Arctic resource development, which offer jobs and economic opportunities both on native territory and without.

## Ongoing Rights issues

Despite the economic success and positive social impacts, there still exist ongoing rights issues within the North Slope. For example, consensus cannot always be reached between tribes, corporations and municipality on important issues. Additionally, although the region is big enough for responsible development, often communities are displaced to make way for resource development. Another common problem is how to balance conflicting western imported lifestyles with traditional ways of living in Inupiat society.

For the oil industry, a new rights issue has emerged with the increase in offshore oil exploration - the disturbance of marine life. Marine life is of fundamental importance to the Inupiat both in regard to subsistence and to culture. Recently, a focus on offshore seismic exploration and drilling is increasingly bringing the oil and gas industry into the marine environment, potentially disrupting the sea-life which could have an affect on the coastal communities. The issue is that Inupiat jurisdiction does not apply to marine environments and therefore they have less political leverage in negotiations or decisions regarding the continued exploration. As the marine exploration will continue despite mixed feelings from affected communities, the ASRC and communities are trying to include their interests in the offshore activities.

## **Partnerships**

Working in partnership with industry is still the clearest and most fundamental way to support future economic success and cultural survival in the North Slope. In the North Slope, the ASRC opted to work in partnership with BP on oil exploration on lands outside their jurisdiction, in order to engage on their own terms. There was a long litmus test period of 30 years to see how the partnership would develop, and it has proven worthwhile for both parties. A new partnership is being forged with BHP Billiton to develop coal in the western Arctic. This partnership was forged after seeing BHP demonstrate a good rapport with local communities at a diamond mine project in Yellowknife, Canada. Partnerships with industry offer an opportunity to build stable economies and to influence responsible sustainable development.

## **Conclusion**

Underlying all of the issues, there is always a balance to be achieved between exploration and development of resources, and respect for people and land in the North Slope and Alaska. Due to a lack of tourism, timber or other resources, the North Slope is dependent on the development of oil, and these proceeds enable the native structures and communities to survive. This dependence creates interesting relationships, bringing back the idea of 'walking in two worlds' which is a balance difficult to achieve.

The balance is a core issue for the North Slope communities. On one hand, critics say that developing resources in the North Slope is all about loss, the Inupiat's loss. But the challenge is acknowledging this difficult position and instead taking the opportunities available and using them as a tool to make the future better. The North Slope has found some sort of balance in this regard. With economic empowerment under the ANCSA, the people have developed a non-complacent stance towards industry, being pro-active in engaging with resource development and ensuring that concerns are recognized and addressed. They have to do this because it is not viable to fight resource development - the income can support the success of future generations.

## **Discussion Points**

### **On the debate surrounding opening the land of the Arctic National Wildlife Refuge (ANWR) for development of oil**

Richard noted that the ASRC and local communities were advocates for opening the ANWR coastal plain for a simple reason; it is their land. It is owned by the community residents on the surface, and the subsurface is owned by shareholders of the ASRC. This dual-ownership has agreed to support the resolution to open ANWR. If the lands are opened, it gives the village and the ASRC a chance at economic self-determination. However, the national debate is heated, and will not be resolved until a decision is made by Congress. But in the meantime, there is no harm in exploring and then making reasonable decisions about whether to go ahead depending on the estimated extent of the consequences.

### **On advice to communities who resist opening lands to the extractive industry**

Richard started by illustrating that they initially fought hard against any oil and gas exploration, as it represented destruction of a way of life. But once the land claims were settled, the municipality was created and the population gained internet and business experience, they were able to negotiate on their own behalf and on their own terms. In addition, the indigenous communities' knowledge and local expertise proved extremely valuable. When BP was having difficulty with the icy conditions and struggled to monitor the constantly changing weather, they approached the locals for their advice, listened to their recommendations, and changed the facility based on the input. It is clear that indigenous peoples hold valuable tools and knowledge that give them power and leverage when dealing with companies. Knowing this helps dispel some of the anxiety and fears about embracing industrial development.

## Emerging International Trends In Indigenous Rights

Lee Swepston (International Labour Organisation - ILO)

Lynn Sicade (U.S. State Department)

Lee Swepston, Senior Adviser on Human Rights in the Fundamental Principles and Rights Sector of the ILO, gave an overview of the development of ILO Convention 169 ("ILO 169") on Indigenous Rights, and a detailed exploration of the key articles in the Convention. He elaborated on other indigenous rights initiatives. Complementing Lee's assessment of international rights instruments, Lynn Sicade of the U.S. Department of State introduced her views on recent trends in the international indigenous rights movement. Lynn spoke from her personal experiences on indigenous rights and international trends in the past and going forward. As a child growing up in Washington State, she was exposed to the "fishing wars" in the Northwest, where the state government tried to stop Native Americans from exercising their treaty right to traditional fishing livelihood. The issues associated with this would be a theme that would continue throughout her career. More recently, Lynn also has had the experience of "walking in two worlds": as a Native American, and working for the U.S State Department acting as a delegate of the U.S. government in negotiating on Convention 169.

### ILO 169

Lee Swepston

The International Labour Organisation (ILO) is a tripartite entity involved in labour issues. The focus on indigenous rights came out of the recognition of the informal economy, and the need to address rights in this context. ILO 169, the only international convention on indigenous rights, evolved out of a long process beginning with Convention 107 (C107) on "Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries".

#### Convention 107

C107 was adopted by the International Labour Conference in 1957. This Convention set out that the protection of indigenous rights was best achieved by assimilating and integrating indigenous peoples into mainstream culture. When the international indigenous movement began in the 1970s, and the World Council of Indigenous Peoples was established by Canada in 1975, C107 fell under heavy scrutiny. The first working group on indigenous populations, established in the 1980s by the UN High Commissioner on Human Rights (UNHCHR), criticized C107 as being "assimilationist", "isolationist" and "condescending" among other things. This led to the creation and adoption of ILO Convention 169 in 1989.

#### ILO Convention 169

ILO 169 marked the first time that indigenous peoples' representatives participated at an international level in the creation of an international instrument. This was a radically different approach from the development process of C107. The key points of interest from ILO 169 are set out here<sup>1</sup>:

- **Article 1:** It must be noted that there is no international definition of indigenous peoples (IPs). This article is rather a statement of coverage, as there is sometimes difficulty with the word "indigenous" and proving what it means. For this reason, C169 (as did C107) refers to "indigenous and tribal peoples", and not "indigenous" alone. For example, the word "indigenous" could not easily apply to the 80 million tribal people in India alone, so rights based on originality don't work globally. So ILO has to look at the social situation in each situation, and determine whether or not a people are "indigenous". Article 1 also sets out that self-identification as "indigenous" is a fundamental criteria to be covered by the Convention. The use of the term "peoples" should also be noted.
- **Articles 6 and 7 (consultation & participation):** These Articles are fundamentally important. The essence of these clauses is that good faith consultation must be carried out for every decision affecting IPs. And it must be recognized that consultation has very different meanings for different peoples, as does participation. So no single international standard can go into details because of the diverse views and capacities of communities on this.

<sup>1</sup> Please see the ILO website for the full text of 169 - [www.ilo.org](http://www.ilo.org)

- **Article 13 (land):** This recognizes the link between land and “cultures and spiritual values”. It is vital for the relationship between IPs and the lands that they occupy to be recognized.
- **Article 14 (land rights):** States that land rights “shall be recognized”. The difference between saying “recognized” as opposed to “granted” implies that the rights already exist.
- **Article 15 (natural resources):** This clause has particular relevance for the oil and gas industry. It asserts that: “the rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded”, and suggests that this be done at a national level. This includes the right to be consulted before exploration or exploitation, and the participation in the benefits of such activities including jobs, infrastructure, management, etc.
- **Article 16 (removal from lands):** Because often development has displaced indigenous peoples from their lands, this article specifically sets out the “right to return”, stipulating the consequential obligation on any resource development industry to restore lands, or as appropriate, provide compensation. It also specifies that indigenous peoples should not be removed from the lands that they occupy, but where relocation is necessary as an exceptional measure, that such relocation should only take place with free and informed consent from that community; or if this cannot be obtained, after full procedures including public inquiries where necessary.

There are in total 44 Articles in ILO 169, but the ones highlighted above are of most relevance to the extractive industries. ILO 169 especially has an important relationship with the oil and gas industry because it is the only ratifiable international instrument on indigenous rights in existence<sup>2</sup>. This is important to international law and it is binding to the countries that ratify it. ILO 169 has been, and is, utilized by the World Bank and regional development banks as a basis for policy on indigenous peoples, and it has also been used in many places as one aspect of re-examining national situations. To date, only 19 countries have ratified ILO 169, the majority of these being in Central and Latin America. However, there is expected to be a surge of ratifications over the next ten years, as other countries in Africa and Asia consider adopting the Convention.

## IFC Performance Standards

In addition to international law, the policies of the international financial institutions should be taken into account, because they impose conditions on externally-financed development projects including resource extraction. The International Finance Corporation (IFC) adopted Performance Standards in 2006 that address indigenous rights in three of its standards. The Performance Standards were developed by the IFC for their investment sectors, in particular to form part of the framework for industry who receives IFC financing for projects. This is an important and recent instrument to complement ILO 169, as it sets out conditions for investment. It has been adopted by the Equator Banks - 40 development banks working on project financing from the private sector.

The IFC publication on Performance Standards gives reasons why business should pay attention to international human rights law, including:

- Reputational risk;
- Risk that these standards will be used as part of negotiating techniques in countries where they may not even be ratified; and,
- When an international convention has been ratified, it becomes in one way or another part of national law. This can arguably mean that they are directly enforceable in that country.

## Conclusion

International instruments are important to business, and indeed have a direct relationship with business representatives becoming involved in the development process of recent initiatives. The extractive industry in particular is now acknowledging that understanding and recognizing legal frameworks regarding indigenous rights is an integral part of corporate social responsibility. The future of these initiatives is certainly worth keeping an eye on.

<sup>2</sup> N.B. Since the workshop and before the publication of this report, the UN Declaration on Indigenous Peoples was adopted by the UN on 13 September 2007. The ILO Convention and the Declaration are complementary instruments. The Declaration cannot be ratified and is an instrument laying out aspirations and not obligations, as compared with the Convention which becomes legally binding when ratified.

When considering indigenous rights, it is important to distinguish them from indigenous human rights. “Indigenous rights” refers to a set of rights that go beyond human rights, such as management of land, resources, education, judicial, and law enforcement. They are rights referred to in initiatives, such as ILO 169, that have to be singled out as needing protection. They are the rights that indigenous peoples exercise as groups, as opposed to human rights that apply to individuals, and are significantly different because they indicate the importance of the group to indigenous people rather than the individual rights that we have come to know. This “indigenous rights” based approach is what is used to interpret what declarations say and translate international initiatives into action.

### **Problems with Representation**

There are several trends that become evident from examining the history of indigenous rights. One trend is that industry and indigenous peoples face difficulties in finding “true” representatives for indigenous communities. Often in the international forum there are outspoken “representatives” who dictate what communities want or expect. But they may not necessarily be speaking for the communities as a whole. An example is in New Zealand where the Maori people negotiated economic rights to a jade bed. According to some, international obligations might have required New Zealand to return the land, not some other form of compensation. The government did not agree to do this, and the Maori were fine with this arrangement with the exception of a few who protested to international organizations. For industry, government or international organizations to determine consent within a community on a decision is difficult: often a person in a position of power needs to be asked to grant consent. The international community is still ascertaining how to deal with this; part of the problem arises because there is mixed indigenous representation at meetings, or sometimes more simply because states don’t like what they have to say.

### **Vulnerability of indigenous peoples**

Another trend is the fundamental vulnerability of indigenous peoples - socially, economically and politically - both historically and still today. This is the most fundamental reason why international mechanisms seek to apply international norms to protect indigenous rights. This vulnerability is highlighted in the failure of governments to implement international conventions such as ILO 169 which they have ratified. One case that highlights this is the *Awasi Tingni vs. Nicaragua*, a precedent case heard in the Inter-American Court on Human Rights (IACHR).

Nicaragua, having ratified the American Convention on Human Rights, is legally bound to the Convention contents, including non-discrimination and recognizing right to property. In 1996 the Nicaraguan state sold a 30-year concession to a Korean company to log the forest where the indigenous *Awasi Tingni* community live. No consultation was carried out with the *Awasi Tingni*, and logging simply began. With their territory, livelihoods and lives under threat, the *Awasi Tingni* brought the state of Nicaragua to trial under the Convention. They won in an unprecedented landmark case that saw the expulsion of the timber company and compensation for the community’s lost resources. More importantly, the *Awasi Tingni* won the demarcation of their territory and land rights. However, many indigenous communities continue to be unsuccessful in their battles to stop invasive resource development, or even to be consulted. This has led to the trend for international initiatives to be put in place as a mechanism to protect the rights of vulnerable indigenous populations.

### **State ownership and regulation of resources in question**

The case of the *Awasi Tingni* had further implications for the credibility of state management of resources. The disregard shown by many states toward indigenous rights may impact states’ future control over resources. With the introduction of international initiatives, it is a possibility that when states claim that they are managing resources, such as oil, for the benefit of indigenous peoples, this may not be enough to protect them from the jurisdiction of the court ruling that they are not within the legal framework. State-claimed ownership and regulation of resources, including subsurface resources, may no longer be recognized as authority when there are indigenous populations in the region. If international mechanisms can hold national bodies accountable, this could mark a new era for indigenous rights.

### **Implications for Business**

For industry, especially the extractives like oil and gas, this represents a disturbing trend because it means that companies have to protect themselves. Signing contracts with states to develop resources may no longer be a secure business transaction if that

state's authority over the resources can be called into question. Companies will need to know what national and international laws apply to the country, and what sort of consultation the state carried out with indigenous communities in the area. Furthermore, companies will need to ask the state about the quality of consent they received for the concessions; and also ask the indigenous communities themselves about the state consultations. It then falls to companies to decide whether to go forward with exploration or development, and they may be held accountable, especially by NGOs, if proper consultation is found to be lacking.

## **Conclusion**

Lynn now recognizes that the fish-in controversy was much more complicated than she had perceived as a child. The fishing conflict arose because the local community wanted more than just being allowed to carry out their livelihood of fishing; they wanted the newcomers to recognize and respect their traditions and rights. This is a common theme that resounds internationally in the indigenous rights movement, and it is something that much of the world is trying to address. But, as illustrated above, the trends in international initiatives may reveal exciting new paths that indigenous rights could follow. The future of indigenous rights is gaining positive momentum. It is also exciting for the oil and gas industry, and an opportunity to share and implement best practices regarding engagement with indigenous populations and how to sustain open and rewarding relationships.

## **Discussion Points**

### **On why the USA and Canada object to ratifying ILO 169**

There is still a problem with process. When the convention was adopted, there was formal representation from indigenous peoples by the working group. Yet in comparison with today's standards, this representation was small and insufficiently diverse. Significant groups of indigenous peoples were not involved. So in some countries indigenous peoples are dissatisfied with, for example, the clause on self-determination, and they maintain that it is incomplete. In the USA and Canada, which are familiar with indigenous rights lobbying, the governments are less likely to ratify something that is still contentious within the country.

The complicated politics surrounding the UN Draft Declaration on Indigenous Rights contribute to countries' reluctance to sign it. There is great sensitivity in the US about the term "self-determination" especially after the conflict in Bosnia. Recognising the right to self-determination can be interpreted as the right to sovereignty or independence, with the implication of the breaking up of nation states. The concern for the US is that the provisions of the Declaration cannot be implemented in a way that supports both the state geopolitical system and indigenous peoples' right to self-determination. If indigenous peoples demanded self-determination based on the principles, it could lead to an even more unstable political system and generate feelings of betrayal and false hope. If either ILO 169 or the Draft Declaration are to be adopted by the US and Canada, they will have to be changed; but it is uncertain whether the changes will meet the approval of indigenous peoples.

Another trend to watch is the process of borrowing money from the International Finance Institutions (IFIs). Generally, when organisations approach the bank for loans it carries out background checks on financial history, assets, and income, and then asks about liabilities. The process is similar for nation-states who approach the large IFIs, such as the World Bank or the IFC. At this point in time, land claims are not taken into account when assessing funding for projects. However, there is a move to consider land claims as liabilities in such instances, and should this occur it would have repercussions for corporations, who would have to consider states' borrowing powers.

### **On how business has been affected by the international instruments**

One thread that emerges from this whole discussion is that 30 years ago, human rights, especially indigenous rights, were not in companies' scope of vision. So there has been an enormous sea change in the last 30 years leading to these topics being high priority on business agendas worldwide. Today companies are working in far more complicated legal, social and political environments than ever before, and this trend is only going to increase.

### **On global warming being described as a human rights issues at the Inuit Circumpolar Conference - how does this “fit” with the instruments**

Environment claims are difficult to deal with in the human rights discourse. For the United States, acknowledging something as a right means that if such rights are violated, remedy should be administered. In the case of global warming, which is an intangible, the government solution is to reject this claim out of hand. But what this response fails to understand is the concern behind the claim that future generations will suffer as a consequence of global warming.

### **On the likelihood of an indigenous “commonwealth” being formed as its own “state” above national laws**

The simple response is that indigenous peoples worldwide are too different for this to ever function. Indeed within the US alone, the tribes are extremely different and often disagree over issues. Each group has its own self-determination and there is no need to form an international group to be sovereign.

## Scenario Discussions

During the afternoon workshop, attendees split into several smaller groups to examine a variety of scenarios. These scenarios were drawn from real company experiences, or hypothetical situations used in training. All of the topics are particular, but not limited, to specific North American issues.

The objective of this session was to encourage participants to draw upon their knowledge, share their experiences, and work through situations requiring critical thinking on indigenous rights issues.

The scenarios given to the workshop attendees focussed on the following topics:

1. Access road and safety issues
2. Balancing production and traditional lifestyles
3. Building trust and sharing information
4. Indigenous hiring program
5. Grievance procedures
6. Financing legislative obligations
7. Standards and informed consent

The scenarios are set out here, along with the options to consider provided by the working groups. While these solutions are not exhaustive, they provide an insight into the familiarity that workshop attendees have in dealing with indigenous rights issues.

## Scenario #1 – Access Road and Safety Issues

### Part 1

The best environmental approach is to use an ice road. And after consultation, the local community was on board because they could use it themselves to get to the closest town, which meant they could get supplies and greater access to travel further in general.

First year, things are going fine, and the community and business are using the road together. However, the community is concerned that with greater access and more visitors to the area, the amount of alcohol in the region has increased.

It's mid-winter, operations are underway, but the elders are becoming very vocal about the road and the alcohol issue, and their thoughts are now turning to summer and are worried about access to the area for outside hunters or others, and want to know, what are you going to do about it?

*What do you do?*

### Options for Consideration:

Suggested process to undertake for addressing this issue:

- Clarify what are the exact issues
- Understand the circumstances and identify what might exacerbate the problem(s)
- Set out expectations for the roles that both the company and the community will take in addressing these issues
- Explore suitable options together \*(see below)
- Make sure that there is shared responsibility for implementing the solutions
- Assess the feasibility of all alternatives (cost, time factor, different techniques)
- Conduct thorough follow-up assessments and ongoing consultations

*\*A variety of solutions might involve: establishing a 'dry' community (alcohol-free); implementing road control (check points); initiate a shuttle bus service (for community and company use only); emphasize company policy (i.e. on alcohol consumption, weapons, drugs etc.); organize education/social programs in the community on the risks of alcohol; initiate an awareness program and carry out enforcement.*

### Part 2

You have worked things out with the community regarding their concerns about the ice road. However, you now have some new concerns. The community is using the ice road to travel to their hunting destinations, which means they are traveling in very close proximity to your facilities while carrying weapons. You have a policy that your employees and contractors may not carry weapons on company property or while in company vehicles for safety reasons. One of the safety professionals has reported to you that he saw community members stopped on the side of the road very near the facility carrying their weapons. While nothing happened, the observation made the safety professional nervous. He tells you he understands that we need to respect the local hunting culture, but isn't the company's safety culture just as important? He wants to know what you can do about the situation.

*What do you do?*

### Options for Consideration:

It is advisable to undergo the same process as above:

- Clarify problem
- Understand the circumstances
- Articulate expectations (company and community)

- Explore options together \*(see below)
- Establish shared responsibilities
- Investigate feasibility (cost, time factor, techniques)
- Conduct follow-up assessments and ongoing consultations

*\*Other options might involve:* building a different access road for hunters; commencing an awareness campaign surrounding the issues; modifying company policy to include sealed guns; consider what other equipment could be provided.

## Scenario #2 – Balancing production and traditional lifestyles

Oil production from your offshore production is viewed by the local indigenous fishing/hunting community as a potential risk to their subsistence resources and culture. Their concerns include the cumulative impacts of small-scale emissions into the water, the impacts of a large spill, and the disturbance to whales and seals, all of which they hunt on a small scale.

'By 'disturbance' and 'impacts' the IP cite frequent boat movements, noise from seismic, drilling and boats, the alleged effects on whales of radio communications, disruption to the seasonal hunting, effects on reproduction and changes to the pattern of whale movements in the area

The local whaling commission has also expressed concern. The local government has a foot in both camps: it has given you the required local permits and benefits financially from the local taxes paid by your operations; but the IP communities form part of its electorate, and it is anxious to demonstrate a willingness to protect and promote the IPs' way of life.

Subsistence hunting in this area is of critical importance, since there is very little other employment: a few indigenous people work for you, and there is a little tourism. The IP have asked you to suspend production and boat movements at certain times of the year – the times when whaling regulations allow them to hunt.

You need to maintain or increase your current production of 70,000 barrels a day to keep the operation viable. At the same time you wish to maintain a relationship of mutual respect with the indigenous people.

*Please think about what measures you can put in place to ensure that: (a) your production can be maintained or increased; and (b) the IPs' traditional activities and way of life are protected.*

### Options for Consideration:

Internal solutions should be encouraged which will manage both community issues and production expectations.

There are some main assumptions, these are that production may influence birthing season along with migration and could probably lead to cumulative effects.

If certain aspects such as impacts (spills and noise), production scale, and marine life (migration and hunting) were measured, then more realistic conclusions and solutions could be devised, such as increased communication, agreements within community and monitoring.

*Suggested process to carry out:*

1. Undertake a detailed situation analysis
2. Consult within the company on the possibility of varying production rates depending upon season and therefore decreasing potential disruptions during whaling season
3. Utilize environmental monitors
4. Explore opportunities to further diversify the local economy (such as tourism)
5. Increase dialogue and establish trust with the community
  - a. Work to increase both scientific and traditional knowledge perspectives on concerns
  - b. Acknowledge and employ local expertise to assist throughout the process

## Scenario #3 – Building Trust and Sharing Information

### Part 1

You are meeting with the community elders to gather traditional knowledge (hunting grounds, seasons, cultural sites, cabin locations, how the river works) before planning seismic activity. You have a good relationship with this community and the elders and expect they will be pleased that you are having this conversation so early.

However, during the meeting, the elders show reluctance to divulge information, and have marked several key allotments that they will not grant access to. After much probing, they say they're worried that what happened to another community could happen to them. Apparently, in the other community, the contractor had driven their seismic vehicle across the sod house of one of the communities and had crossed a ceremonial area. Also, illegal hunters learned about the prime hunting spots and began hunting there.

*What do you do?*

#### Options for Consideration:

One of the first actions for the company to take is to establish a protocol for engagement with the elders, i.e. main contacts, regular meetings, etc. This will help establish an environment of trust and consistency. Previous good practice case studies can be used to demonstrate to the elders the company's commitment to respecting the community, including the same policy for contractors.

"Special places" in the community should be identified, and correlated with the plans of seismic engineers to avoid any overlap.

Any access to operations in general should be designed to be:

- Minimal / restorable
- Discourage intrusion

*Further solutions could include:*

- Agreement on usage of merchantable timber.
- Explore possibilities for government funds for capacity building.
- Involve local people for implementation-transferring skills and training.
- Check what international conventions (e.g. biodiversity) have been ratified by host country.
- Carry out Environmental Impact Assessments (EIAs) and collect baseline data and validate outcomes with communities.

### Part 2

You have successfully gained the trust of the elders. However, they do not have the funds to gather all the information you request. So, they are asking financial support for developing a map, including specific GIS coordinates, of the traditional knowledge. But they claim that the results of this study will be their intellectual property and shared only on their terms, and they will be able to share it with your competitors.

*What do you do?*

#### Options for Consideration:

Establish a common agreement with council leaders to share data. Create a "consultation office" where the community will have access to view and utilize the GIS / GPS data collected. Identify the issues involved with national intellectual property law.

## Scenario #4 – Indigenous Hiring Program

Your company has committed to an indigenous hiring program. However, only 50% of the pool of applicants has the proper training and qualifications. There is a training program at the regional university, but it doesn't begin until six months from now and is not easily accessible by the indigenous community.

The indigenous community claims that our development has changed the nature of the economy in the area from their former hunting / trapping / fishing economy to one that revolves around our industry, and therefore, we are obliged to provide the necessary training and education.

However, you know that you are in early days of your project and while this would be a good time to start training, you have only drilled ten exploratory wells and don't yet know how those will pay out.

*What do you do?*

### Options for Consideration:

- Evaluate the current state of engagement with the community and arrive at a mutual understanding with a common desired outcome.
- Manage community expectations by having clear process and setting benchmarks.
- Ensure there is transparency with regard to the development project, especially at early stages of the exploratory wells, so that the community is well informed. This openness will help to manage expectations regarding the hiring opportunities.
- Bring training to community. Focus on providing pre-training and/or basic training during the six months before the technical program starts at the regional university.

## Scenario #5 – Grievance Procedures

You are the social performance manager in an exploration project in remote, indigenous territories. The project is now in its operational stage and has been highlighted as a prime example of meaningful engagement with local stakeholders. However, you find that a small minority of the Indigenous community, backed by international NGOs, are filing several grievance claims per week. Rather than being based on genuine demands, you sense that some of these complaints are put in as part of a well-orchestrated, broader strategy to discredit your company. As many of the claims involve other parties, such as sub-contractors and local government, the grievance processing procedures take up a lot of time and resources on your part. Increasingly, because of the extended grievance resolution period resulting from this, the media are picking up on what they see as a failure on your side to take indigenous concerns seriously.

*How should you respond to the complaints from the indigenous communities?  
(taking into consideration the IFC Performance Standard on grievance procedures<sup>3</sup>)*

### Options for Consideration:

*Note: The following suggestions assume that the company has an established grievance procedure in place.*

Before starting the following process, you should ensure to first get buy-in from your line managers so that they are involved in the process from the beginning and you keep company expectations aligned.

1. Carry out a situation analysis
  - Internally –
    - check situation with other company operations
    - check back on company grievance procedures
  - Externally –
    - gain a better understanding of claims, relationships between issues and parties
    - increase community engagement and your understanding of community perspectives
    - potentially seek guidance from community leaders, local government and contractors
2. Increase transparency
  - formally acknowledge the complaints if you have not already
  - Indicate the company's commitment to finding a suitable resolution for all parties
3. Fast-track actions towards solutions of legitimate problems
  - a. Take ownership and responsibility for legitimate issues
  - b. Potential actions could include:
    - i. If legitimate complaint is identified and connected to commitment or policy statement then corrective action should be taken by the company.
    - ii. Openly and transparently externally communicate the company's grievance procedure process.
  - c. Facilitate open and constructive dialogue through:
    - i. conducting a public and/or joint stakeholder forum or working group
    - ii. Supporting a third party audit of the grievance procedure process

### Goals:

- To demonstrate that a fair process has been carried out to address the grievances.
- Protect company reputation.

<sup>3</sup> \*IFC Standard: 23. The client will respond to communities' concerns related to the project. If the client anticipates ongoing risks to or adverse impacts on affected communities, the client will establish a grievance mechanism to receive and facilitate resolution of the affected communities' concerns and grievances about the client's environmental and social performance. The grievance mechanism should be scaled to the risks and adverse impacts of the project. It should address concerns promptly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, and at no cost and without retribution. The mechanism should not impede access to judicial or administrative remedies. The client will inform the affected communities about the mechanism in the course of its community engagement process.

## Scenario #6 – Financing Legislative Obligations

You are planning a project in a region where the government has a legislative obligation to consult with the indigenous community regarding the potential impact of industry in the area. At the same time, the government has decreed that companies must be responsible for this type of consultation.

The community has requested that you financially contribute to a consultation capacity fund before they will engage with you. However, your management is asking whether it is the company's responsibility to pay that fee, since we have already paid the government taxes, royalties and application fees which are all to address in general our access to the resource.

You know that engagement with the community is vital, and relationships with the government regulators are also important. However, you are equally concerned about the precedent this sets. You also know that some of your competitors are paying this fee and some have chosen not to.

*What do you do?*

### Options for Consideration:

*(The process described below is actually implemented by companies in Alberta.)*

- Conduct due diligence to determine if the fund is independently managed.
- Check with other companies in the region and the government to understand existing practices and the credibility of the process in contributing to the consultation capacity fund.
- Engage with the community to understand their expectations, needs and their technical capacity.
- Try to direct funds toward in-kind capacity building (e.g. training, facilitation).
- Work with other industry players to create a collaborative, more effective process.
- Sell internal management on the benefits (pros / cons) of pursuing this approach, including criteria and boundaries (note: the process might apply differently elsewhere).
  - Outline the risks that occur when operations manager act too quickly.
- Have a good understanding of the state legal and corporate policy framework.
- Upon agreement, develop accountability / transparency mechanism – should be well established.
- Advocate to have the government play an active role in process.

## Scenario #7 – Standards and Informed Consent

Your company is part of a consortium running an exploration project in a non-OECD country. As a requirement for financing, the project adheres to World Bank Standards<sup>4</sup> on Indigenous Peoples. The consultation process, which entailed long and complex negotiations with several Indigenous communities, local government and the company, has drawn to a close. However, two months later, a small fraction of one community - seven indigenous women - step up and claim that they have not been heard in the consultation process. Despite having been present in several consultation meetings, they have come to the conclusion that they could not express themselves openly in the company of men. They want the project to come to a halt immediately and to re-open the consultation process.

*What do you do?*

### Options for Consideration:

- The World Bank needs to be made aware of the situation.
- Elders need to be consulted as to whether it would be appropriate to meet the women as a group or individually.
- A stakeholder board could be set up to include women.
- An analysis should be conducted to determine the reason why the women do not feel comfortable to voice their concerns - are religious issues a contributing factor?
  - Find concerns and where possible / appropriate, try to mitigate or resolve.
- Determine if this is the view of all the women in the community.

*How do you define and implement free, prior and informed consultation in operational terms?*

### Options for Consideration:

To ensure that “free, prior and informed” consultations are carried out, it is essential that consultations are conducted as early as possible for the project and continue throughout the process.

The company should make sure that both men and women are informed in plain language. Websites, brochures or handouts in the local language could be used to explain the process.

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<sup>4</sup> A requirement for World Bank financing is “free, prior and informed consultation with affected communities that leads to the affected community’s broad acceptance of the project”.

# Appendix A: Workshop Agenda

**28 June 2007**

08:15	Registration and Coffee	
09:00	Welcome from IPIECA <ul style="list-style-type: none"> <li>Aboriginal prayer to open meeting</li> </ul>	<i>Chris Morris (IPIECA)</i>
09:10	Introduction to Business and Human Rights	<i>Jeff Flood (Nexen)</i>
09:30	This Land is My Land	<i>Leroy Little Bear (University of Lethbridge)</i>
10:15	Break	
10:30	A Rights-Based Approach to Lands and Resources	<i>Craig Benjamin (Amnesty International Canada)</i>
10:45	The Interface with the Extractive Industry	<i>Pat Ruby (Public Engagement / Social Impact Consultant)</i> <i>Richard Glenn (ASRC – Arctic Slope Regional Corporation)</i>
12:00	Lunch	
13:00	Emerging International Trends in Indigenous Rights: UN Draft Declaration and ILO Convention 169	<i>Lee Swepston (ILO – International Labour Organization)</i> <i>Lynn Sicade (US Department of State – Office of Multilateral Affairs)</i>
14:20	Scenario Discussions <ul style="list-style-type: none"> <li>Break into small groups and discuss a mix of 'traditional' Business and Human Rights topics and aboriginal topics</li> </ul>	
15:00	Break	
15:15	Scenario Discussions, continued	
16:00	Debrief from the discussions	
16:30	Wrap-up / Close	

## Appendix B: Speaker Biographies

### **Craig Benjamin – *Amnesty International***

Craig Benjamin works for the human rights organization Amnesty International coordinating their research and campaigning in Canada on the human rights of Indigenous peoples. He also represented Amnesty International at the United Nations throughout the finalization of the Declaration on the Rights of Indigenous Peoples and works in a number of coalitions with Indigenous peoples' organizations across the country and around the world. Before joining Amnesty, he was a facilitator with an international Indigenous peoples' organization that worked on issues related to biodiversity conservation.

### **Richard Glenn – *Arctic Slope Regional Corporation (ASRC)***

Richard Glenn is Arctic Slope Regional Corporation's Vice President of Lands. Arctic Slope Regional Corporation ("ASRC") is the Alaska Native-owned regional corporation representing more than eight thousand Inupiat Eskimos of Alaska's North Slope. The shareholders of ASRC own surface and subsurface title to nearly five million acres of Alaskan North Slope lands with oil, gas, coal and mineral resources.

Richard received a Bachelor of Science degree in Geology from San Jose State University in 1985 and a Master of Science degree in Geology from the University of Alaska (UAF) in 1991. Richard has special expertise in resource development in an Arctic setting, and is well-versed in on and offshore Arctic geologic processes.

In 1995, Richard was asked to head Alaska's North Slope Borough Department of Energy Management, where he supervised the energy programs for all of the North Slope Borough villages. He continued in this capacity until January 2001. Richard began his duties at ASRC on February 5, 2001 and now also serves on the ASRC Board of Directors in the At-Large seat.

Richard is a certified professional geologist in the state of Alaska, and holds positions on many boards and commissions, most of them dedicated to education and scientific research. In addition to other postings, he has twice been appointed by the President to the United States Arctic Research Commission, is the Board President of the Barrow Arctic Science Consortium, and has served as Chairman of the Board of Trustees for Ilisagvik College.

Richard also serves as co-captain of the Savik Ahmaogak subsistence whaling crew. He is a member of the Suurimmaaniitchuut Eskimo dance group and a budding rock-and-roll keyboardist.

### **Professor Leroy Little Bear**

Leroy Little Bear is a member of the Small Robes Band of the Blood Indian Tribe of the Blackfoot Confederacy; born and raised on the Blood Indian Reserve; attended and graduated from St. Mary's School on the Blood Indian Reserve; attended and graduated from the University of Lethbridge, Lethbridge, Alberta with a B.A. Degree in 1971; attended and graduated from the College of Law, University of Utah, Salt Lake City, Utah with a Juris Doctor Degree in 1975. From 1975 to the end of 1996, Mr. Little Bear was a professor in the Native American Studies Department at the University of Lethbridge. In January of 1997, Mr. Little Bear retired from the University of Lethbridge. From January 1998 to June 1999, Mr. Little Bear was the Director of the Harvard University Native American Program.

Mr. Little Bear has served in a consultant capacity to many Indian Tribes, and organizations including the Blood Tribe, Indian Association of Alberta, and the Assembly of First Nations of Canada. He has served on many different committees, commissions, and boards including the Task Force on the Criminal Justice and Its Impact on the Indian and Metis Peoples of Alberta in 1990-91.

Mr. Little Bear has authored many articles including "A Concept of Native Title" which has been cited in a Canadian Supreme Court decision. He has co-authored books including Pathways to Self-Determination, Quest For Justice, and Governments in Conflict with Dr. Menno Boldt and Dr. Anthony Long.

Current interests include the exploration of North American Indian science and Western physics and the exploration of Blackfoot knowledge through songs, stories, and landscape.

## **Patricia M. Ruby, MSW – P. M. Ruby Consulting**

Pat Ruby's work in participatory governance, socio-economics, conflict resolution and public engagement spans four decades. She has managed, taught, planned, facilitated, designed, evaluated and testified. Her clients have included governments, industries, Aboriginal authorities, communities, and non-governmental organizations in Canada and internationally. Pat has been called a "pioneer" in her work integrating public engagement and community development with socio-economic analyses and development planning, and in her approach to integrating decision analysis with dispute resolution and participatory governance initiatives.

Of particular interest to IPIECA 2007 workshop participants will be Pat Ruby's significant work and long-term perspective regarding development north of 60:

- In this decade, she has provided specialist expertise in socio-economics both to the National Energy Board and to the Mackenzie Gas Project.
- In the 90s, Pat developed northern and community affairs capacity for Amoco Canada, and provided planning support to the Government of the Northwest Territories and Indian and Northern Affairs Canada,
- In the 1980s, Pat provided expert testimony to the Beaufort Sea Environmental Assessment Review Panel, and contributed to strategic planning processes for energy companies, aboriginal organizations, the Government of the Northwest Territories and Government of Yukon.
- In the 1970s, Pat was one of the field's pioneers in the integration of socio-economic analyses with public and stakeholder involvement in her planning work for the Alaska Highway Gas Pipeline and Dempster Lateral pipeline projects.

Pat Ruby holds a Master of Social Work in Community Practice from the University of Calgary, and is a life member of the International Association for Public Participation. She established her consulting practice in 1980.

## **Lynn Sicade – US Department of State**

Lynn Sicade is the Deputy Director of the Office of Multilateral Affairs in the Department of State's Bureau of Democracy Human Rights and Labor (DRL). She is the principal action officer on indigenous rights.

Ms. Sicade joined the US diplomatic corps in 1990 and has served in El Salvador, London and Washington DC. In Washington she held the position of Senior Aide to the Special Envoy to Argentina, Brazil, Chile, Ecuador and Peru. As Senior Aide, Ms. Sicade earned a superior honor award for "extraordinary contributions to the peace negotiations between Ecuador and Peru." She has also earned three superior honor awards and one meritorious honor from DRL for her work on human rights issues at the United Nations.

Prior to joining the Department of State, Ms. Sicade was a legislative assistant to the Speaker of the California Assembly. She holds a Juris Doctor from UCLA and a Bachelor of Arts in history from Biola University. Ms. Sicade graduated from Grossmont High School in La Mesa, California in 1980.

Born in Tacoma, Washington, Ms. Sicade has also lived in Alaska, California, Louisiana, Maryland and Virginia. She is half Athabaskan (Alaska Native) and half Scottish. She lives in Arlington, Virginia with her partner Amber Newsum and their three cats, Chesapeake Bay Retriever and Solomon Islands Eclectus Parrot.

## **Lee Swepston – International Labour Organisation (ILO)**

Lee Swepston is Senior Adviser on Human Rights, in the Fundamental Principles and Rights Sector, of the International Labour Office in Geneva. A US citizen, he attended the University of North Carolina at Chapel Hill, and took his law degree at Columbia University. He joined the ILO in 1973, in the International Labour Standards Department, and has served as Regional Adviser on International Labour Standards in English-speaking Africa, Chief of the Equality and Employment Branch, and Human Rights Coordinator of the ILO. He is currently Senior Adviser on Human Rights, and Director of the Fundamental Rights and Principles at Work Department. Mr. Swepston has written numerous books and articles on various aspects of human rights and ILO standards, child labour, freedom of association, discrimination, and indigenous and tribal peoples.

## Appendix C: List of Attendees

BP Alaska	Cindy Bailey
BP International	Elizabeth Wild
CBSR (Canadian Business for Social Responsibility)	Melissa Whellams
CDA Collaborative Learning Projects	Luc Zandvliet
Chevron	Jim Dawson
Chumir Ethics Foundation	Heather Macintosh
Chumir Ethics Foundation	Janet Keeping
ConocoPhillips	Lee Zarnikau
ConocoPhillips	Stephen Gast
ConocoPhillips Canada	Tom Horvath
EnCana Corporation	Craig Stenhouse
ENI Norge ASI	Aksel Luhr
ExxonMobil	John Symonds
ExxonMobil Corporation	John Kelly
First Peoples Worldwide	Rebecca Adamson
Foley Hoag	Gare Smith
Hunt Oil	Cynthia Hart
Imperial Oil	Janet Maaten
IPIECA	Chris Morris
IPIECA	Jenny Owens
Marathon Oil	Charlie Curlee
Nexen	Jeff Flood
Nexen	Jim Shaw
Nexen	Lloyd Martell
Norsk Hydro	Ingunn Kroksnes
Occidental Petroleum (OXY)	Luis de Angulo
OMV	Simone Alaya
Petro-Canada	Fiona Jones
Repsol YPF	Marisol Garcia-Bango
Responsibility Matters Inc.	Mark Brownlie
Shell Canada	Ashley Nixon
Shell Canada	Margit Phillips
Shell International	Angela Shaw
Shell International	Karen Westley
SURE Northern Energy (Shell)	John Alook
SURE Northern Energy (Shell)	Jordon Kuschminder

Talisman Energy Inc	Kim Brenneis
Talisman Energy Inc	Reg Manhas
The Ethical Funds Co.	Jennifer Coulson
Total	Laure Armandon
Total E&P Canada	Anita O'Brien
Total E&P Canada	Dawn Lizotte
Total E&P Canada	Karim Zariffa
Trident Exploration	Kyla Fisher
World Petroleum Congress	Ulrike Von Lonski

## Speakers

Amnesty International	Craig Benjamin
ASRC (Arctic Slope Regional Corporation)	Richard Glenn
ILO (Int'l Labour Organisation)	Lee Swepston
P.M.Ruby Consulting Inc.	Patricia Ruby
University of Lethbridge	Professor Leroy Little Bear
U.S. Dept of State – Office of Multilateral Affairs	Lynn Sicade



The International Petroleum Industry Environmental Conservation Association (IPIECA) is comprised of oil and gas companies and associations from around the world.

Founded in 1974 following the establishment of the United Nations Environment Programme (UNEP), IPIECA provides one of the industry's principal channels of communication with the United Nations.

IPIECA is the single global association representing both the upstream and downstream oil and gas industry on key global environmental and social issues including oil spill preparedness and response; global climate change; health; fuel quality; biodiversity; social responsibility and sustainability reporting.



Nexen is a Canadian-based, global energy company growing value responsibly. We are strategically positioned in some of the world's most exciting regions: the North Sea, deep-water Gulf of Mexico, Middle East, offshore West Africa and the Canadian Athabasca oil sands. Nexen conducts community development programs with indigenous peoples in operation regions worldwide, and within Canada is involved with active Aboriginal recruitment, sponsoring an Aboriginal Leadership and Management Program, conducting Aboriginal Student Leadership Awards, and providing support to the Sunchild E-learning Community, an internet-based high school program.