

Indigenous Peoples and Mining Encounters: Strategies and Tactics

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Let it not be said of India that this great Republic in a hurry to develop itself is devastating the green mother earth and uprooting our tribal populations. We can show the world that there is room for everybody to live in this country of tolerance and compassion....

**President of India K.R. Narayanan's Address to the Nation on Republic Day
January 25, 2001**

Executive summary

What is the probability that indigenous peoples will persist – as cultures – as a consequence of mining encounters? What steps or procedures must be put in place so that both indigenous peoples and other stakeholders become net beneficiaries? How do we guide operations toward desired outcomes (goals) before the encounter between indigenous peoples and the mining industry?

Much of the remaining unexploited ores in sufficient concentration to be attractive for modern commercial exploitation lie under indigenous lands. As pressure builds to gain access to their lands, a major sustainability and land access problem is unfolding. Mining can empower indigenous peoples, but previous encounters have stripped them of their sovereignty, their traditional wealth, and posed multiple impoverishment risks. The public has indicted the industry for tragic and unnecessary forced relocations, violations of human rights, under-compensation for damages, and lack of benefit sharing. Sustainable mining is not possible if indigenous cultures – that are the prototypes of persistent peoples on this planet - are rendered unsustainable.

This report addresses the most critical sustainability in an encounter between indigenous peoples and the industry, as well as governments, financiers and non-governmental organizations. An encounter has four dimensions. The first involves perceptions and objectives - delineating who is or is not indigenous, presuppositions about one another, and desired outcomes. The second dimension involves the stakeholders' capacities to sustain and/or resist negotiations. The third involves stakeholder tactics and/or strategies for dealing with one another. The fourth dimension consists of socio-economic and environmental risks and benefits - possible "on the ground" changes that may occur to the livelihoods and culture of project-affected peoples. A consideration of these four dimensions assists in understanding the negotiations, or lack thereof, between indigenous peoples and other stakeholders.

Reviewing the history of encounters, we discover that this is a time of broad experimentation with a wide range of organizational and financial arrangements. We capture the breadth of diversity by building a typology of possible strategies and tactics being taken by governments, companies, non-governmental organizations, international financial intermediaries, and indigenous peoples.

By and large, encounters between indigenous peoples and the mining industry result in loss of sovereignty for traditional landholders and multidimensional creation of new forms of poverty imposed upon already poor people. This new poverty is created by a failure to avoid or mitigate impoverishment risks that accompany mining development. Indigenous peoples are suffering a loss of land, short and long-term health risks, loss of access to common resources, homelessness, loss of income, social disarticulation, food insecurity, loss of civil and human rights, and spiritual uncertainty.

The most serious sustainability risks from mining are those that challenge an indigenous people's rights to their culture and heritage - degrading indigenous 'wealth' and well-being. Non-indigenous stakeholders have little concern or understanding of indigenous wealth. Indigenous 'wealth' is not a matter of dollars and cents. It exists within their understandings of their surroundings, both social and environmental, and in behaviors that have proven beneficial in maintaining their cultures and life styles over the millennia. Indigenous wealth

includes income generated from traditional sources, access to common resources, food security, social articulation, spiritual certainty, and mutual support in times of need. Threats to wealth are greatly exacerbated if the group is faced with mining-induced, displacement or resettlement.

Mitigation of mining-induced impoverishment risks is possible, but not a priority for the mining industry. A survey of the strategies and tactics of the principle stakeholder groups involved in encounters reveals a lack of standards for dealing with indigenous peoples and minimal concern for their welfare.

Sustainable empowered development means that indigenous peoples do not lose control over their life circumstances as a consequence of an encounter, but rather improve their livelihoods and have their collective wealth enhanced. Towards this end, we offer a probabilistic empowerment model with 15 different sustainability elements. The more of these elements that are incorporated in the encounter, the greater the chances of a sustainable outcome for indigenous peoples and other stakeholders.

Looking toward Rio +10, we feel a significant step toward addressing the threats posed by mining and other extractive industries to the sustainability of indigenous peoples would be to extend the environmental precautionary principle approved in Rio 1989 to the impact of mining on indigenous peoples.

Adapted, the proposed Precautionary Principle for Mining in or near Indigenous Peoples would read:

“Non-indigenous stakeholders in mining shall use the precautionary approach to protect the indigenous peoples and the environment that supports them. Mining cannot take place on indigenous lands without their prior informed consent and participation in their self-defined indigenous development. Where there are threats of serious or irreversible damage, scientific and economic uncertainty shall not be used to postpone cost-effective measures to avoid and mitigate risks to indigenous livelihoods and cultures.”

“Land is life and that land is sacred. It is the duty of every indigenous person to defend and protect the land.”

The late Dulag Machi-ling
Said before he lost his life defending his land in the Philippines .

I Empowerment or impoverishment

Indigenous peoples own some of the earth’s last vast tracts of undeveloped land. These lands hold much of the remaining unexploited ores in sufficient concentration to be attractive for modern commercial exploitation. From the perspective of the mining industry, the key issue is what must be done to gain access to these ores. From the perspective of indigenous peoples, their encounter with mining raises broader, key sustainability issues. What obligations should mine owners/investors have to the indigenous peoples living on or near the land to be explored or mined? What are the rights of indigenous peoples when mining companies desire the minerals beneath the lands that they occupy and use? What strategic issues should be “on the table” so that indigenous peoples and mining/mineral companies may determine whether or not they can work out a mutually satisfactory deal?

Mining may empower indigenous peoples by a) providing opportunities for the realization of their goals, b) alleviating poverty and provisioning community and individual amenities, c) creating training and employment opportunities, and d) sharing of project benefits. At the same time, mining may threaten their sovereignty and pose multiple impoverishment risks. If all or any part of the group is involuntarily resettled, then the risk of multidimensional impoverishment greatly increases (Mathur 2001, Sonnengberg and Munster 2001, Downing 2002).

2 The Encounter

Whether indigenous peoples are impoverished or empowered depends on what happens during a sequence of interactions that we shall call the “encounter.” The encounter includes many parties or stakeholders, including mining companies, governments, financiers, non-governmental organizations (NGOs) and the affected indigenous groups.

An encounter has four dimensions. The first dimension involves perceptions and objectives - delineating of who is or is not indigenous, presuppositions about one another, and desired outcomes. The second involves the stakeholders’ capacities to sustain and/or resist negotiations. The third involves stakeholder tactics and/or strategies for dealing with one another. And the fourth dimension consists of socio-economic and environmental risks and benefits - possible “on the ground” changes that may occur to the livelihoods and culture of project-affected peoples. These risks are over and above the poverty that peoples suffer in their daily lives prior to mining, and refer to the creation of “new poverty” (Cernea 2001, Downing 2002). The litmus test of whether or not a change is a product of the encounter is: would the change have occurred in the absence of the mining initiative?

2.1 Who are indigenous peoples?

The term “indigenous peoples” describes many peoples, but few describe themselves as such. To the contrary, indigenous peoples usually call themselves by names in their own language which translate as the “people of the land” or “people of a place” or “people of X”, where X refers to some critical natural resource that sustains or symbolically represents them.

Indigenous communities vary greatly. Occupying areas ranging from the Arctic north to the humid and dry tropics, indigenous peoples have devised a myriad of ways to reproduce themselves within a culturally managed, ecological setting. Each community has evolved its own methods of gaining sustenance, protecting its resource base, maintaining community organizations, and dealing with external threats.

From the onset of a specific encounter, non-indigenous and indigenous stakeholders may hold different beliefs regarding who is and is not indigenous.¹ Non-indigenous stakeholders (NIS) who may be expected to incur financial obligations for impacts may legitimately wish to know who is and is not eligible to make a claim.

One seemingly objective way to unravel who is and who is not “indigenous” is to turn to emerging international criteria. Definitions are set forth in The Indigenous and Tribal Peoples Convention No. 169 by the International Labour Organization (ILO), the World Bank’s Indigenous People’s Policy (OP 4.20), the World Council of Indigenous Peoples, the Rio Declaration on Environment and Development, the International Convention on the Elimination of All Forms of Racial Discrimination, Rio Agenda 21, the OAS Declaration on the Rights of Indigenous Peoples, the UN Draft Declaration on the Rights of Indigenous Peoples, and the UN Convention on Biological Diversity.²

¹ If an outsider questions as to whether an indigenous person is or is not “indigenous” this will be perceived as a challenge to their sovereignty.

² The World Bank’s Indigenous Peoples Policy (4.20), for example, defines indigenous people by the presence, in varying degrees, of some of the following distinctive characteristics 1) close attachment to ancestral territories and the natural resources in them; (2) presence of customary social and political institutions; (3) economic systems primarily oriented to subsistence production; (4) an indigenous language, often different from the predominant language; and (5) self-identification and identification by others as members of a distinct cultural group.”

Ignoring the economic criterion in the World Bank approach, the Special Rapporteur of the UN Economic and Social Council Sub-Commission on Prevention of Discrimination and Protection of Minorities sees indigenous communities, peoples and nations as “those which, having a historical continuity with pre-invasion and pre-colonial societies that have developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.” (UN ESOSOC, 1986)

NGO and indigenous rights advocates frequently turn to the Indigenous and Tribal Peoples Convention No. 169 by the International Labour Organization (ILO) for their definition of indigenous and tribal peoples, seeing them as those in independent countries “. . . whose social,

Definitions of indigeneity agree on three broad points: attachment to ancestral lands or territory and the natural resources contained therein; customary social and political institutions; and self-identification as a group. Of these, self-identification is given considerable weight.

There is no unanimity as to whether other criteria - including sharing a common language or the presence of a subsistence economy - should be a part of the definition of indigenous peoples. From an operational perspective, a definition that denies benefits to indigenous children because they do not speak their parents' language is a formula for divisiveness and conflict. Another criterion, the presence of a subsistence economy, has little support outside of the World Bank. Particular care should be exercised to avoid the misleading and obfuscating use of economic criteria for defining a cultural group - such as claiming that indigenous peoples must be primarily oriented to subsistence production. It confuses the culture of poverty with a peoples' cultural identity, leading to the erroneous proposition that if indigenous peoples gain wealth or education, they become non-indigenous.³

Indigenous peoples rights to participate meaningfully in natural resource management have been recognized in international agreements including The Rio Declaration on Environment and Development, the International Convention on the Elimination of All Forms of Racial Discrimination, the previously mentioned ILO Convention 169, Agenda 21, the OAS Declaration on the Rights of Indigenous Peoples, the UN Draft Declaration on the Rights of Indigenous Peoples and the UN Convention on Biological Diversity. Included in the various declarations are the recognition of indigenous land rights, traditional resource management, equal rights to participate in public affairs, the need to protect indigenous lands from environmental threats, and the need to achieve prior informed consent of indigenous peoples before making decisions affecting their rights and interests.

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.. Indigenous peoples are defined as those in independent countries “. . . who are regarded as indigenous on account of their descent from the population which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their social, economic, cultural, and political institutions.”

The World Council of Indigenous People offered a definition. “Population groups who from ancient times have inhabited the lands where we live, who are aware of having a character of our own, with social traditions and means of expression that are linked to the country inherited from our ancestors, with a language of our own, and having certain essential and unique characteristics which confer upon us the strong conviction of belonging to a people, who have an identity in ourselves and should be thus regarded by others. The principle of self-identification was reaffirmed in the Final Statement of the Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights in April of 1995 saying “We assert our inherent right to define who we are. We do not approve of any other definition.”

³ With the emergence of modern technologically based societies, members of some indigenous groups have developed capacities to participate beyond their home communities as attorneys, legislators, businesspeople, etc., and serve as advocates for their peoples while other groups have no effective capacity to represent their interests or anticipate the consequences of mining within their home territories.

These decisions include those affecting their rights to participate in and be compensated for activities related to the extraction of minerals.

2.2 Stakeholders' presuppositions

Indigenous peoples, mining enterprises, governments, development agencies, NGOs and others enter an encounter with presuppositions about each other's motives, cultures, and rights. These are usually unspoken, presumed "truths" which are based upon past experience, cultural stereotypes, or descriptions from diverse sources, including non-written, verbally transmitted ones. If incorrect, they may obstruct negotiations or misdirect their progress.

2.2.1 Non-indigenous Presuppositions

The content of these presuppositions varies from encounter to encounter, but six particularly troublesome ones resurface in project after project.

1. Indigenous peoples who are in the way of mining should passively sacrifice themselves and their culture in the national interest or the greater common good.
2. The financial risks facing the local peoples are insignificant relative to the risks taken by industry, financiers and developers.
3. Cultural differences between indigenous peoples and the outside will ultimately disappear, removing the need to worry about development-induced cultural changes.
4. Undesired project impacts are indirect – and not the responsibility of the mining company or government. Implicit in this presupposition is the notion that indigenous people must be responsible for cleaning up a mess caused by others and just move along.
5. The extent of an economic or social impact is directly proportionate to the linear distance from the mine or associated infrastructure.
6. Infrastructure impacts affect only individuals, not social groups, communities or cultures.⁴

All six are false (Hyndman 1994, Downing and McIntosh 1999).

2.2.2 Indigenous Presuppositions

The most significant presupposition held by indigenous peoples is that their inalienable rights to their lands and resources override subsequent claims by conquering or dominant societies (Rogers 2000). Even more, they believe that they ARE part of the land. Land is not a distinct marketable commodity, save for internal transfers of use rights to other members

⁴ Methodological note: Our clues come from hundreds of hours of discussions and secondary research with those indigenous peoples who find themselves in the way of development, with multilateral bank officers, personal observations of the intransigence of a large Chilean hydroelectric power company and the World Bank to accept responsibility for environmental and cultural damages to the Pehuenche Indians caused by their projects, reading of pipeline Environmental Impact Statements, and hours and hours of discussions with mid-level bureaucrats in the governments of Honduras, Guatemala, Mexico, Saudi Arabia, Sri Lanka, Kenya, and the United States.

of the group – who are equally part of the land.⁵ And indigenous land – its mountains, rocks, rivers, and specific places – may hold religious and ceremonial significance – comparable to the significance that the great religions place in their sacred places in Jerusalem or Mecca. Ethnographic surveys often reveal that land markets are socially circumscribed, with very low levels of market transfers among indigenous peoples to outsiders with around 10-15% of the land parcels being transferred through sales, as opposed to inheritance (Downing 1973).

Non-indigenous stakeholders (NIS) are likely to misunderstand indigenous people's attachment to the land. NIS tend to approach the encounter as primarily an economic transaction in which the loss of land and resources is compensated with cash payments or some potential employment, with possibly short term material benefits. In contrast, the indigenous struggle is not simply to own real estate but also to protect their culturally defined landscape. Land is not a marketable commodity. The loss of land may mean, to them, that their entire culture is threatened, including their ways of being and doing, their shared expectations, and shared understandings of the nature of their environments and their pasts, presents, and futures. Anthropological research and decades of work on this problem by groups such as Cultural Survival lends support to indigenous concerns (see Cultural Survival Quarterly at www.cs.org).

History is essential to the way in which indigenous peoples navigate an encounter. They remember. While some have clear knowledge of the potential of mining to empower or impoverish their communities, others have no experience. In the latter case, the demands of mining are interpreted as comparable to previous claims and forced takings of their resources by outsiders. Historically, such encounters have wrought havoc, and in some cases extermination, of indigenous peoples. Non-indigenous promoters of a mining endeavor (owners, investors, negotiators and on-site representatives) may have little or no interest in indigenous peoples or their historical struggles.

Indigenous and non-indigenous peoples work on different time frames. The indigenous time frame may not match the multiple clocks ticking during an encounter. To the indigenous communities, exerting their will over the outcome of a mining venture is more important than the time it takes to complete a successful negotiation. To the mining company, fixed and variable costs, returns made to investors, and loans must be paid in a timely manner. Investment demands that ore is extracted in the shortest possible time at the least possible cost. Likewise, governments are concerned about receiving their timely share of taxes, fees, and expected accommodations. And financiers expect timely repayment and return on their investments.

2.3 Desired outcomes

Mining companies, along with their investors and supporters, are clear about their desired outcome: minerals out of the ground and in a form acceptable to buyers or for further processing. To reach this outcome, they need unfettered use and access to the mineral resources of indigenous lands. Non-indigenous stakeholders may also seek other non-mining related outcomes that influence their actions during the encounter. They may

⁵ These internal transfers might be market transactions.

foresee cultural or economic futures for indigenous peoples reflecting the outsider's culture and values rather than those held by the indigenous peoples. Chew and Greer reported that even when mining companies and other business interests in Australia prepare impact assessment studies of social and environmental effects, the perspectives of local Aboriginals and Torres Strait Islanders are likely to be ignored (Chew and Greer 1997, <http://les.man.ac.uk/ipa97/papers/chew87.html>, Howitt 1995). Desired outcomes will influence how options are evaluated. While these outcomes may not reflect any formal government or company policy, leaders and staff often assume moral authority over indigenous peoples, whom, they may see as poorly informed, needy, or inferior peoples in need of charitable assistance.

Just like non-indigenous peoples, indigenous peoples want tomorrow to be better than today – with 'better' being defined by them in a culturally appropriate manner. Outcomes are linked to on-going struggles for support, services, sovereignty or self-determination. Indigenous peoples use distinct processes for decision-making that often make it difficult to determine their desired outcomes. They reach an agreement after divergent points of views have been expressed, discussed, incorporated or rejected. Consequently, it is not uncommon for indigenous peoples to hold divergent views as to the nature of the threats to their communities, and the desirability of certain outcomes of the mining encounter. There may be no community consensus about what potential alternatives are available or possible. And it is not uncommon for these views to evolve in the light of new information or discussions. Thus, indigenous peoples frequently enter into encounters without a clear and concise idea of their position or preferred outcomes on a particular endeavour even though they hold a clear view on their preferred outcomes for their culture.

Frequently it is difficult to determine who speaks for the group, making it difficult to reach binding agreements. This proves especially challenging to non-indigenous groups in dealing with communities without a hierarchical, corporate structure with clearly defined and accepted decision-making processes. If decisions are to be reached, lengthy deliberations are often required. Costly, time-consuming conflict is almost assured if the non-indigenous stakeholder unilaterally designates a spokesperson in order to move things along.

2.4 Capacities to sustain or resist

A stakeholders' capacity to sustain or resist a negotiation is determined by their knowledge, organization, resources, and time needed to reach a consensus or agreement on a plan of action. Non-indigenous stakeholders hold considerable advantages over indigenous stakeholders. This not only includes access to capital, but also knowledge about the potential market value of indigenous resources, legal representation, and political influence. Outsiders can read ethnographic works and interview cultural experts. The converse is unlikely. Indigenous peoples are rarely trained in the culture and economics of the other stakeholders they meet during an encounter.

How long an indigenous group can resist depends not only on the internal capacity of the group, but also on the ability of mining promoters to forge strategic alliances with government and other NIS. Conversely, indigenous peoples may increase their capacity

through alliances with NGOs and other sympathetic interest communities, e.g., religious, labor, academic, and environmental organizations.

2.5 Sustainability risks

2.5.1 Indigenous wealth and impoverishment risks

Sustainability is seriously challenged by actions that destroy a peoples' ability to accumulate, maintain, enhance, and transfer their wealth to future generations. Those unfamiliar with indigenous culture mistakenly may believe that mining poses minimal risks, since indigenous peoples have little income or wealth to lose and high unemployment. Promoters argue that the local income from mining might break the unending chain of poverty. They argue that both the mining industry and governments have fulfilled their obligations once indigenous peoples are compensated for the market value of lost lands, material goods and public facilities.

Aware that the distribution of these economic benefits may be limited, some companies have instituted programs to stimulate small indigenous-owned businesses (Cameco in Saskatchewan, Canada, Red Dog in Alaska, USA, and WMC Resources in Australia). Economic outreach efforts are very important, but the remedy provided may not address underlying impoverishment and sustainability threats. Earned incomes represent only a small portion of indigenous wealth. The wealth that supports the sustainability of their culture is found in institutions, environmental knowledge, and resources, especially land embellished with cultural meaning. It includes access to common resources, localized prestige, secure positions within society, culturally appropriate housing, food security, social support and identity. Indigenous peoples invest vast amounts of time and resources in perpetuation of their culture, institutions and social support systems. Their cultures provide members with a well traveled map of where they came from and what is likely to happen today, tomorrow, next week, and next season (Downing 1996, Moles 2001). This cultural map is localized, reflecting generations of experience and is not readily transferable to another landscape.

Lest there be any doubt as to the importance of indigenous wealth to sustainability, indigenous peoples have flourished for generations, often in highly marginal environments that are incapable of sustaining non-indigenous lifeways without substantial injections of external capital, energy, and technology. Indigenous sustainability is based on protecting their environmental and resource endowments. Indigenous peoples protect their resources and draw on the fruits of the land, much like drawing on the interest from an account without touching its principal.

All stages of the mining process – from the earliest days of planning and consultation, exploration, exploitation through decommissioning may disrupt the accumulation and intergenerational transfer of indigenous wealth. More precisely, disruption may simultaneously come from eight directions a) mining and negotiation activities that break the ebb and flow of social and economic life, b) excessive demands made on the capacity of the local people and their traditional leaders, c) disruption of educational activities, both traditional and formal, d) exacerbation of factionalism resulting from inadequate consultation, e) disruption of leadership structure and/or improper legitimization of

individuals as “authorities” f) failure to pursue a policy of prior informed consent, g) a draw down on their limited financial resources, and h) the desecration of sacred sites.

It is not easy to compensate indigenous peoples for their loss of wealth. Remedial actions require stepping beyond monetary compensation. Reviewing the push for full compensation, the former Senior Social Policy Advisor of The World Bank recently concluded that

“even perfect compensation assessment and conveyance would still be insufficient for achieving the policy objective of restoration and improvement. The means of compensation are not commensurate with the goals of restoration. The very principle of ‘compensation only’ is faulty (Cernea 2000, 2001).”

Restoration of indigenous wealth, in contrast to compensation for lost land, is a just criterion to judge benefits to indigenous communities. Restoration means full compensation to cover the market values of lost wealth, including lost social and environmental services. Restorative actions might include a long term sequence of non-monetary steps, institution building, training, environmental restoration, and extended financial arrangements to assure that people retain or regain their ability to accumulate wealth. The effectiveness of these efforts, judged from the perspective of indigenous sustainability, is whether or not the project leads to an accumulation of indigenous wealth – within the broader definition of wealth. And the effectiveness of all restorative and mitigating actions will be, in the end, judged by a key question: are the peoples giving more than they receive? If so, then they are subsidizing the mining project – which is morally and economically outrageous.

Mining projects bring immediate hazards to indigenous peoples. Some may not materialize. Others will and need avoidance or mitigation. If unavoidable, then restoration and reconstruction is mandatory. Non-indigenous people come to indigenous communities and engage in a number of practices against which the local people have no defense - including robbery, rape, consumption of alcohol and even murder. With the opening of roads and the movement of machinery, animals and people are frequently injured and on occasion killed. Avoiding these potential risks is a necessary first step for any company working on or near the lands of indigenous peoples.

These risks to sustainability are many. They include landlessness, homelessness, loss of income (from traditional sources), loss of access to communal resources vital to their survival, cultural destabilization, food insecurity, health degradation, marginalization, corrosion of their sovereignty, disruption of their social organization and traditional leadership, spiritual uncertainty, restriction of their civil and human rights, limitation of their capacity to participate in the broader economy/society, and threats from environmental disasters.⁶

In the case of environmental risks, the degradation of vegetation cover, soil contamination, reduced water quality and quantity, and loss of biodiversity often reduce or eliminate an indigenous community’s capacity to provide for itself and limits the capacity of landscapes to

⁶ These risks are part of a knowledge base accumulated over the last 50 years from impacts of infrastructure projects on indigenous peoples.

maintain them. Environmental changes are often cumulative, time delayed, and the consequences may not be anticipated or understood by indigenous communities, or even by mining companies and governments. These risks are greatly exacerbated if the group is faced with mining-induced, displacement or resettlement (Downing 2002).

The spiritual ties that bind indigenous peoples to specific landscapes create a special problem, especially when the disturbed or destroyed landscape is a ceremonial or worship place or viewed as a bequest from ancestors or spiritual powers. The loss of the solace once found with traditional practice can leave indigenous people adrift and prey to the unscrupulous. When fundamental beliefs are challenged, the ability of a group to sustain itself is threatened.

2.5.2 *Development-induced displacement and resettlement*

Compared to the risks proposed above, mining-induced displacement and resettlement (MIDR) significantly increases the risks of impoverishing local populations, threatening their livelihoods and truncating their chances for sustainable development, even survival (Cernea 1999, 2000, 2001; Balaji 1998a and 1998b, Fernandes 1994, Downing 1996, 2002, Government of India 1993). Societies that have endured for hundreds, if not thousands of years, can quickly unravel and disintegrate under the pressures of forced displacement.

Avoidance of this catastrophic outcome demands detailed planning and the allocation of adequate financial and human resources. Integral to any successful resettlement outcome is the use of highly specialized, long-term resettlement specialists throughout the displacement process. Extensive development knowledge and scientific research show that rehabilitation and restoration (R&R) of livelihoods is more likely when all potential impoverishment risks are identified early and arrangements are made to mitigate or avoid these risks. R&R is also more likely with the informed, timely, widespread, and active participation of project-affected-peoples (PAPs). The chances of risk mitigation and restoration are also increased when stand-alone financing is provided for the displacement, since this removes the conflict of interest that tempts companies to view displacement as an unnecessary social service, rather than a necessary cost for access.

2.5.3 *Loss of sovereignty*

One of the primary causes of indigenous resistance to mining is the potential loss of sovereignty. Mining frequently disrupts indigenous lifeways and institutions, undercutting their capacity to sustain themselves as a community. Indigenous peoples throughout the world pursue their sovereign rights as coequal members of the community of nations.⁷ To indigenous and non-indigenous peoples, sovereignty is thus a sacred concept, like freedom and justice. It refers not only to indigenous land and sea rights, but also political and economic self-reliance, and the right to determine the extent of one's cultural distinctiveness

⁷ The US Supreme Court recognized early in the 19th Century that the relationship between Indian tribes and the federal government is "perhaps unlike that of any other two people in existence." This special relationship is not based on race, but on the inherent sovereignty of Native American people. This is an historical relation. Recognized are Indian tribes' rights of self-governance and self-determination.

(d'Erico 1998). The loss of human and civil rights and the capacity to pass along a culture to subsequent generations can accompany the loss of sovereignty. In a majority of cases, sovereignty refers to the acknowledgement by government of the collective rights of indigenous peoples to their traditional territories and heritage. It does not necessarily infer a desire for a separate state.

Land and a people's relationship to the land are fundamental in 'indigenous sovereignty' struggles. International charters and organizations, such as the Inter-American Commission on Human Rights, the U.N. Human Rights Committee, and ILO 169 recognize that indigenous lands and their resources are critical to the survival of indigenous peoples (Anaya 2000). As Ali (2001) says, a successful negotiation is more likely to take place when title to the land has been confirmed in state law. When title is unclear, the most likely resistance or negotiation strategies are the ones most likely to secure indigenous claims. The US government has recognized the significance of this issue in law when it notes that "Indian people will struggle - will never surrender - their desire to control their relationships both among themselves and with non-Indian governments, organizations and persons" (US Congress Pub. L. 93-638, 1975).

Peter d'Erico (1998) recognizes the spiritual, land based origin of sovereignty.

"Ultimately it is land – and a people's relationship to the land – that is at issue in 'indigenous sovereignty' struggles. To know that 'sovereignty' is a legal-theological concept allows us to understand these struggles as spiritual projects, involving questions about who 'we' are as beings among beings, peoples among peoples. Sovereignty arises from within a people as their unique expression of themselves as a people. It is not produced by court decrees or government grants, but by the actual ability of a people to sustain themselves in a place. This is self-determination. (d'Erico 1998)"

Table 1. Stakeholder Strategies and Tactics Used in the Encounter of Indigenous People and Mining

Government strategies and tactics

Legal frameworks

- Land tenure (esp. eminent domain).....
- Mining
- Environmental
- Indigenous

Use of force

Facilitate negotiation of stakeholders.....

Company strategies and tactics

Corporate Belly-flopping (No strategy).....

Minimalist

- Environmental legal framework
- Indigenous legal framework
- Mining legal framework

Corporate Responsibility Statements

- Statement only
- Statement and organizational components.....
- Statement with performance benchmarks.
- Company-community relations specialists.....

Brokers contracts

- Company community relations specialist.....
- Consulting firm, including negotiation specialist.....
- Local indigenous broker

Benefit sharing arrangements

- Training programs
 - with employment opportunities.....
 - without options of employment opportunities.....
- Mining supplier business agreements.....
- Foundations
 - Company controlled.....
 - Indigenous controlled
- Indirect transfers to indigenous peoples through company cost-sharing with government programs.....

Use of Force.....

Financial Intermediaries strategies and tactics

- Safeguard and operational policies and plans.....
- Conditionalities on loan agreements.....
- Co-financing agreements.....
- Guidelines for best practices.....
- Extraordinary compliance reviews and inspection panels.....
- Belly flops or no strategy or tactics.....

The Encounter

The Encounter

Non-governmental organizations (NGOs) strategies and tactics

- Campaigns and confrontations.....
- Capacity building for local resistance.....
- Legal challenges
- Multilateral technical services to indigenous peoples

Indigenous peoples strategies and tactics

- Acquiescence Plan A1.....
- Resistance Plan A2.....
- Negotiated indigenous development plans (Plan B).....

Strategic and tactical stakeholder alliances

- Bilateral
- Multilateral

3 Stakeholder strategies and tactics

The probability that indigenous peoples will persist – as a culture - increases if the impoverishment and sovereignty risks are avoided or if unavoidable, mitigated. Likewise, stakeholder costs and conflicts are reduced when indigenous issues begin to be strategically addressed very early in the project preparation. By strategy, we mean that a stakeholder has procedures for planning and guiding operations toward desired outcomes (goals) before an encounter. In contrast, tactics are maneuvers used to gain advantage or success during an encounter. This section offers a typology of strategies that stakeholders use. Stakeholders include companies, governments, international organizations, non-governmental organizations, international financial intermediaries and, of course, the indigenous peoples.

3.1 Government strategies and tactics

National legal frameworks define the rights and obligations of stakeholders during an encounter. Relevant legal frameworks pertain to eminent domain, the rights of indigenous peoples, mining provisions, and environmental protection laws. These frameworks are often inconsistent and contradictory, opening the door to appeals and political arrangements. Under the doctrine of eminent domain, the State claims ownership and the right to transfer sub-surface or other natural resources. This proves problematic for indigenous peoples – especially those with unsettled claims to land (National Round Table on the Environment and Economy 2001). Their communal stewardship, weakly articulated land markets, poorly delineated aboriginal boundaries, lack of deeds, and non-recognition of the surface/subsurface distinction puts them in conflict with the doctrine of national eminent domain.

Exploration and exploitation may take place at the expense of some groups or individuals in the name of the common good, usually with the proviso that landowners are fairly compensated. Indigenous lands may or may not be recognized as eligible for the compensation, being considered vacant or government lands. Compensation for takings is restricted to the value of the land – which may be difficult to determine given that land markets are weakly developed in indigenous communities. The doctrine of eminent domain incorrectly assumes the elasticity of land, ignoring its spiritual and emotional value to an indigenous community.

3.1.1 Legal and regulatory frameworks

In developing countries, trade liberalization and the need to increase foreign exchanges is leading to major revisions in antiquated mining laws. The government's trust relationship over indigenous peoples is codified in legal frameworks. At the same time, indigenous laws are being passed, reflecting an increased international and national concern for the plight of indigenous peoples. Viewed in terms of their impact on indigenous people's rights during an encounter, the revisions are frequently moving in different and sometimes contradictory directions.

Over the last century, the international and national legal systems have moved away from state-centered positivism, assimilation, and its concern for individuals. Concern for peoples and populations identified as indigenous is now a part of a broader focus on peoples who suffer the legacy of colonization. Based upon a growing concern for world peace and human rights, there has been an increased formalization of the legal rights of indigenous peoples (Handelsman 2001). New and revised indigenous laws have been passed, legal challenges raised (Cody 2001, Kirch 2001) and new, yet weak institutions formed to protect indigenous rights (Anaya 2000)

The pace of the transformation varies, with more concrete laws protecting indigenous peoples in a) the developing nations of the Americas and in b) developed countries with strong democratic traditions in which native peoples have pushed hardest for their rights (Anaya 2000).

In some cases, the legal reforms are placing the sustainability of indigenous communities under proximate threat. In its new Philippine Mining Act of 1995, international mining interests are permitted to assume full control of their local subsidiaries (in contrast to previous requirement of 60% Filipino ownership). The act assigned companies an Easement Right from which indigenous peoples may be evicted. Mineral lands are also exempted from the issuance of ancestral land claims and ancestral domain claims (Bastida 2001, Tartlet 2001). According to the Third World Network's Briefing Papers see www.twinside.org.sg/title/brie5-cn.htm, Corpuz (1996) reports that hundreds of mining applications have been filed, covering around 13 million hectares of indigenous lands. Taking the lands applied for and including existing and already approved mining operation areas, 45% of the entire 30 million-hectare land area of the country is now under mining applications and operations. In the heavily indigenous Cordillera region alone, the applications cover over half the region (1.082 million hectares).

In other situations, the redrafting of mining laws appears to have improved the lot of those in the way by more clearly defining the obligations of mining companies to indigenous populations. In India, new regulations are superceding The Coal Bearing Areas Act of 1957, expanding national obligations to those who are displaced or otherwise have their livelihoods threatened by India's voracious demand for its only traditional energy source (Mathur 2000).

Better scenarios are found in the Northern Territory in Australia where some Aborigines have obtained the legal power of prior informed consent, including the right to detailed information on proposed blocks, avoidance of sacred sites and places of significance, and the right to veto development projects on their lands. ⁸Nonetheless, aborigines do not have the right to enter into agreements with a company to 'develop' their lands. They can only expect

⁸ The new Aboriginal Lands Rights Act has extended Aboriginal control beyond surface rights to include all minerals in about fifty percent of the Northern Territories. This act is an improvement over the Native Title Act that covers the remainder of the Northern Territories which only extends Aboriginal rights to six feet below the surface. Under the stronger Aboriginal Lands Rights Act the indigenous people receive roughly 14 percent of net profits while under the Native Title Act, the returns from mining range from two to seven percent of net profits.

full consultation when representative indigenous organizations, as recognized by the government, set up a meeting with mining decision-makers.

In some countries, indigenous rights are subsumed under environmental laws. In developing countries, most of these laws and formation of their regulatory agencies took place within the past two decades.

3.1.2 National legal frameworks lack harmonization

Indigenous peoples and mining promoters may anticipate prolonged legal battles in countries where the contradictions between reformed mining, indigenous, environmental, and land tenure laws are not yet harmonized. Be it a desire to properly exercise these fiduciary obligations to indigenous peoples, mining industry, or the environment or simply traditional intra-governmental scrapping, the stage is set for prolonged conflicts.

The conflicts can continue to consume local and national resources long after the mining has stopped and the company is gone. In the case of Navajo uranium mining, damages done in the 1940's have been drawn out for over sixty years.

The conflicts are surfacing in national Supreme Courts. In the fall of 2001, the clash between the relatively new Philippine Indigenous Peoples Rights Act and the rights of the State to subsurface mineral resources reached their Supreme Court of Justice. Proponents of resource extraction narrowly lost their claim that the new indigenous peoples' law deprives the State of ownership over lands of the public domain and minerals and other natural resources therein violating the Regalian Doctrine embodied in Section 2, Article XII of the Philippine Constitution (Mordeno 2001, Norvelli 2001).

A promising development is taking place in Panama. As part of the process of reforming its antiquated mining law (Codigo Recursos Mineros de Panama), the Inter-American Development Bank has contracted for local indigenous technical assistance to ensure that the rights of indigenous peoples are respected. This proactive step might lead to a harmonization, overcoming the common problem of conflicts between the indigenous and mining legal frameworks that has led to long legal battles, appeals, and conflicts (Acosta 2002).

3.1.3 Delegation of negotiations to local or international levels

Governments may also delegate decisions on a conflictive encounter to another local level or international mediator. During 1995, the Organization of American States was invited by the Suriname Government to broker a tri-partite agreement between the government, Canadian mining companies, and the Maroon community of Nieuw Koffiekamp. The negotiations were inconclusive, a sticking point being the refusal by the government and the companies to treat the Saramaka Maroons as legitimate landowners, in line with the 1992 Peace Accord, as the OAS had suggested (Forest Peoples Programme 1996). <http://nativenet.uthscsa.edu/archive/nl/9608/0073.html>.

3.1.4 Use of force – state and company combined

With large revenues at stake and faced with opposition from powerless people, some governments opt to vacate indigenous claims through the use of judiciary procedures and force. In the Guyana region of Venezuela, the government faced the choice of evicting miners or indigenous peoples. Indigenous peoples were reported to have violently tried to block wildcat and multilateral corporate mining from taking place on their land. Laws allowing lands to be set-aside for the indigenous inhabitants were not enforced (ICE nd) www.american.edu/TED/ice/GUYANA.HTM. The unacceptable solution appears to take place in legal systems that do not recognize indigenous concepts and customary land laws. In the Philippines Cordillera, reports are that the Igorot have been evicted from their ancestral lands. Local protests, by the Cordillera Resource Centre for Indigenous Peoples have been answered with military force (FIVAS 1999). www.solidaritetshuset.org/fivas/pub/power_c/k8.html

3.2 Company strategies and tactics

Strategies and tactics for dealing with indigenous peoples rank low on corporate agendas. Warhurst (1998) surveyed the social policies of 69 companies, including the top 50 mining companies rated by market capital, the Financial Times and ICME members (Table 2). With 38 responses, the resulting profile is damning. It shows that less than a fifth of companies identified an appreciation of the need to mitigate social risks. Only a small number of respondents considered the precautionary principle as a means of minimizing risk (13%) and only 5% undertook social impact assessments related to indigenous peoples (5%) or integrated them into their operations (3%). Only two companies had a specific indigenous people's policy (Zambia Consolidated Copper Mines and Normandy Mining Ltd of Australia). The capacity of companies to deal with social, (including indigenous policy) issues is equally disappointing. Only the WMC Ltd employed anthropologists or social scientists and less than 8 percent of companies had offices or personnel dedicated to indigenous affairs or social issues. The survey identified the fact that companies were reluctant to set up a compensation system for affected communities (13%), or to negotiate with communities over land rights issues beyond the law (13%). With only a single data point, 1998, it is not possible to ascertain whether things are improving -although changes are underway (Price Waterhouse 2001). There is an urgent need to redo the Warhurst survey.

Globally, we were able to identify six broad patterns of organizational and financial arrangements being used in encounters.

3.2.1 Corporate belly-flopping

The least defensible approach is to do nothing and react to situations as they emerge during the encounter. We dub this the corporate belly-flop strategy, where a company dives into an encounter. Arguments, such as “that’s life” or “people always get harmed when development takes place” or that “cultures were going to disappear anyway” or that “the company is only responsible for direct impacts” (with “direct” being self-defined to avoid obligations) – are unsubstantiated rationalizations used by the promoters of mining to avoid facing their moral and ethical responsibilities. This reactive approach leads to prolonged confrontations, ad

hoc costly agreements, and exposure of the company ledgers to undisclosed liabilities and risks.

Table 2. Social Responsibility Survey of Major Mining Companies

N= 38 of 69 companies reporting. Adapted from Warhurst 1998.

	N=38	
Social action or response	N	Percent
Willingness expressed to employ local community members	14	0.37
Commitment shown to employment of local communities & indigenous peoples by providing education & training	12	0.32
Propose to improve social performance	10	0.26
Willingness expressed to employ indigenous peoples	9	0.24
Education for community regarding culture and activities of company & possible impacts	9	0.24
Identification of social risks and opportunities	7	0.18
Education of employees regarding local community culture/values	7	0.18
Integrate social policy within corporate management	6	0.16
Contribution of skills or funding to local charities	6	0.16
Take a precautionary approach to operations to minimize risk	5	0.13
Commitment to discuss and negotiate with community over 'land rights' issues beyond demands of the law	5	0.13
Compensation system for affected communities	5	0.13
Collaboration with U.N., World Bank, ILO, and WHO efforts for sustainable development	4	0.11
Have a dedicated Dept./Office/Representative for social issues	3	0.08
Have a dedicated office/personnel for indigenous affairs	3	0.08
Cooperation with local NGOs	3	0.08
Co-operation with & contribution to government development programmes	3	0.08
Specific indigenous peoples policy	2	0.05
Employ community members as liaison officers	2	0.05
Undertake Social Impact Assessments (SIAs), detailing traditional economic activities, social structure, religious activities, skills, land use sacred areas, etc.	2	0.05
Undertake SIAs from the outset of the project	2	0.05
Integrate SIAs within operations	2	0.05
Employ environmental scientists/researchers	1	0.03
Employ anthropologists/social scientists	1	0.03
Adherence to ILO Convention 169 (Rights of Indigenous Peoples)	0	0.00

Minimalist

Using the minimalist strategy, a company argues that the national and local laws, particularly environmental, indigenous and mining law - delimits their responsibilities to the local peoples. PT Freeport, for example, took the minimalist approach when responding to accusation that it was undermining the livelihood of the Amungme and Komoro people. In their public statement, the company claimed that it respected the Papuan indigenous peoples' close relationship to their lands, especially ancestral lands. But they argued that the land within PT-FI's Contract of Work Area was, like almost all land in Indonesia, "tanah negara" (state-owned land). Furthermore, they argued that the land that they used had been "released" by five legal "hak ulayat" releases and that "recognition" had been paid to the community.

3.2.2 Corporate responsibility statements and beyond

Over the past decade, more and more companies have released corporate responsibility statements (CRS), detailing their environmental and community responsibilities (for a sample see <http://csrforum.com>). These are commonly broad statements of principal that are published in the annual reports rather than in languages of indigenous peoples living near their projects. Critics feel that CRS statements reflect a monologue, with a company negotiating with itself, not with indigenous peoples, concerning what are and are not its liabilities.

From the indigenous peoples' perspective, a broad CRS is a "trust me" statement, but does not foretell company actions. Demonstrated commitment increases where organizational arrangements are put in place and open channels of communication are established with the community. Some CRSs are limited to a specific project, and do not reflect corporate strategy toward indigenous peoples who are "in the way" of mining (Jerve and Grieg 1998). By not adopting a pan-indigenous corporate policy, the company is indicating that it intends to set different standards for different encounters.

At least one company is adding performance benchmarks to their CRS. BHP Billiton has established specific management standards designed to ensure that the Company's presence provides lasting benefits and causes as little disruption to the rights of indigenous peoples as possible (BHP Billiton 2001). Their standards include performance expectations for all operations that are reported in their annual reports. Their targets include that none of their activities transgress the UN Declaration of Human Rights and making a modest aggregate contribution of 1 % of pretax profits to community programs, including in-kind support, calculated on a three-year rolling average. This percentage is not based on any risk assessment and may be below replacement value.

Companies may also hire agents to generate positive publicity on the value of the mine to the local indigenous peoples. Publicity alone may improve public perception, but it has nothing to do with avoiding or mitigating on-the-ground risks and can be considered exploitative (The Mineral Policy Institute 1998).

3.2.3 Contract brokers

The information, power, economic, cultural and linguistic gaps between indigenous and non-indigenous stakeholders are great. Mining companies, governments and other non-indigenous stakeholders seek consultants to help them with technical and environmental issues. Unfortunately, this practice is notably less common in indigenous development issues. Warhurst's survey of 38 major mining corporations discovered that only 3 had dedicated offices or staff to social issues and none employed professional social scientists (Warhurst 1998).

For centuries, specialists, who anthropologists call "cultural brokers," have been used or hired to bridge the cultural gaps between indigenous peoples and outsiders. Unless a company has specific expertise in indigenous development, management is wise to avoid its inherent conflict of interest and not take on the role of brokering arrangements between themselves and indigenous peoples. Another highly inappropriate option is to contract

environmental specialists to deal with indigenous issues. The training and skills of an environmental scientist does not include expertise in indigenous development.

A second option is to hire local bicultural individuals to serve as community liaison officers. Precautions must be taken to avoid the temptation of assuming these hired people are leaders or even designated spokesperson for the indigenous community. Neither fish nor fowl, community liaisons move back and forth between two worlds – and may be trusted by neither. Local community liaisons are most valuable for their educational and communication role – leading each side to understand the other – without interfering in the decision-making process.

Companies may also turn to non-governmental organizations, assuming they have the capacity to communicate with indigenous peoples (see alliances below). A third option for the ‘contract a broker’ strategy is to hire a consultancy firm to broker a deal with the indigenous peoples. In Guyana, for example, the Canadian firm CANARC contracted with a consultancy firm, SEMCO, to broker a deal with the local Caribs whose small-scale gold mines were being threatened with closure.

3.2.4 Benefit-sharing arrangements

Over the past decade, benefit-sharing arrangements (BSA) have become an increasingly popular company approach when dealing with the impact of mining on indigenous peoples. The arrangements include a) training programs (with and without employment opportunities), b) support for the development of small businesses enterprises primarily to subcontract with the mining company, c) formation of benevolent or development foundations (some of which are company controlled, others indigenous controlled), d) indirect transfers to indigenous peoples through company cost-sharing arrangements with government agencies where a negotiated percentage of profits is shared with indigenous communities (Hemmati 2000, www.industry.gov.au/resources/indigenouspartnerships/, www.zincworld.org/Environment/Subjects/0401.htm).

Foundations are double-edge swords. They may prove to be instruments for colonization and control, especially when the control of funds is vested in the company. Or they may provide valuable laboratories for building the governing and development capacities of indigenous peoples (Downing and Garcia-Downing 1996).

Companies are in the business of mining, not indigenous peoples’ development. Without a risk analysis that anticipates the social and economic impacts, establishing the level of support and needs of indigenous peoples is a major problem. If a BSA arrangement only mitigates the damages inflicted by the company on the indigenous peoples, then it is not a benefit, only compensation for local damages. A more conscientious approach steps beyond the minimum and offers indigenous peoples opportunities for local training and/or employment.⁹

⁹ For examples, see the Red Dog Mine (www.zincworld.org/Environment/Subjects/0401.htm), Golden Bear Mine, (Report on Native Participation in Mining, Sub-committee of the Intergovernmental Working Group on the Mineral Industry, Phase I & II, Natural Resources Canada, 1990; Cameco Corporation (www.cameco.com/social-responsibility/index.php); several Australian

3.2.5 Use of force

Given all the alternative ways to approach the encounter, it is unacceptable that mining companies turn to the use of force in order to conduct their business. Usually, force is exercised by a surrogate – a contracting private security firm or through the government in response to what are announced as “illegal actions” by the indigenous peoples.

In conflict-prone developing countries, government security forces are unable to protect the staff and installations of extractive companies. The companies have felt obliged to engage private security firms for protection. From the company’s perspective, security is solely for defensive purposes and the needs and conduct of the companies are entirely legitimate.

A sampling of the violence is sufficient to highlight the continuing use of this option (Kazi Aoul 2000).¹⁰ In Indonesia, a Dayak in Indonesia Borneo was shot by a BRIMOB security guard (ENS 2002 www.mpi.org.au/indon/eng_kalteng.html). The Indonesian Human Rights Commission confirmed gross human rights violations against Amungme and Nduga villages and in the region of the Grasberg copper and gold mine, further to the east (www.survival.org.uk/indo1.htm). Local peoples have testified against TVI Pacific, a Canadian firm mining in the Philippines. And, as recently as 14 March 2002, two company guards were shot and killed (Schneider 2002, Mato 2001). In India, police fired on demonstrators against the Utkal Alumina, www.moles.org/ProjectUnderground/drillbits/6_01/do.html). Reports of violence against local indigenous peoples at the Freeport McMoran mine have been reported by the Australian Council for Overseas Aid and the Catholic Church of Jayapura (www.corpwatch.org/trac/feature/humanrts/cases/in-ziman.html).

Actions are being proposed to reduce the violence. The United Kingdom Mission to the United Nations noted that the conduct of firms employed has on occasions fallen short of internationally recognized human rights standards. In December 2000, the mission announced new voluntary guidelines on overseas security provisions during mining

mining companies (www.industry.gov.au/resources/indigenouspartnerships). (Report on Native Participation in Mining, Sub-committee of the Intergovernmental Working Group on the Mineral Industry, Phase I & II, Natural Resources Canada, 1990; www.cameco.com/social-responsibility/index.php; www.industry.gov.au/resources/indigenouspartnerships/ . See Normandy and WMC Resources).

¹⁰ “ We have been opposing TVI since the beginning. We held rallies and marches. We sent petitions and resolutions. In September,1999 we conducted a peaceful picket to prevent TVI equipment from drilling in our sacred site. They used police and armed goons to disperse our picket brutally. At first, I appealed to them and tried to explain regarding our ancestral domain rights, and the need to respect our sacred places but they did not listen, instead we were mauled, beaten dragged boxed and kicked without mercy. We were 56 victims. I myself was handcuffed and was illegally held captive in their compound for more than 6 hours and the Philippine Mobile Force together with the security staff of the TVI took me, and I was arbitrarily detained for more than 30 hours.” Testimony of Onsino Mato, Onsino Mato, Secretary General, Siocon Subanon Association Inc. testified before the United Nations Working Group On Indigenous Populations.

operations (United Nations UK Mission 2000). Their guidelines are designed to promote and protect human rights during mining and energy company operations.

3.3 Multilateral international financiers' strategies and tactics

The multilateral international financiers (The World Bank and regional multilateral development banks) invest around US \$11 billion in mining, making them visible players in the encounters between indigenous peoples and mining. National risk insurance agencies, such as the US Overseas Private Investment Corporation (OPIC), reduce some of the Company's risks when operating in developing countries. The leverage of multilateral financiers is greater than their modest contributions to a global industry. Approval by their environmental departments may reassure hesitant syndicated investors, especially commercial banks that the impact of a given project on indigenous peoples has been properly assessed and that plans for mitigation of impacts meets the financiers' safeguard policies.

Multilateral financiers and risk insurance groups are experimenting with at least six strategies and tactics. The first and increasingly rare option is to do very little – comparable to the minimalist approach described earlier. And slightly more invasive approach involves publishing non-legally binding guidelines for best practice (IFC www.ifc.org, World Bank www.worldbank.org, ADB 1994).¹¹ Third, the World Bank Group, including its private sector arm, the International Finance Corporation, have crafted operational “safeguard” policies regarding steps their clients must take to avoid harm to indigenous peoples and their environment. Ideally, these steps should be completed before loan approval. Fourth, the intermediaries may impose actionable contractual conditions as part of their loan agreement with the company. Fifth, the lender may gain a voice by holding a small equity position in their client's company. The last two options increase lender access to the site and influence on management comparable to any other minority shareholder. Finally, the financial intermediaries may voluntarily submit themselves to internal or external compliance reviews or inspection panels to judge how well they comply with the policies they may have established.

The safeguard policies on indigenous peoples define the risks and responsibilities of projects to indigenous peoples. For those concerned about indigenous rights, the policies are beginning to recognize their unique circumstances but too narrowly focused on compensation for damages rather than on indigenous development as defined by the peoples. As the MMSD project concludes, the indigenous peoples policy at the World Bank is undergoing revisions that may either strengthen or weaken this strategy (see indigenous peoples at www.worldbank.org).

¹¹ On the 29-30 of October 2001, the World Bank began a year-long review to create guidelines for investments in oil, gas, and other extractive industries. Initiating the review, the Bank insists that mining can be compatible with the Bank's "overall mission of poverty reduction and the promotion of sustainable development." Other commentators disagree. The NGOs are requesting funding for indigenous and other project affected people to participate in the review.

From the perspective of indigenous peoples, two of these approaches pose special problems. Currently, co-financing and conditional loans are non-disclosed (secret) and can leave national governments and their agencies responsible for indigenous peoples ignorant of the terms of agreement. Further, such agreements may be de facto considered violations of the human rights of indigenous peoples and an affront to not only their sovereignty but also to the government agencies holding fiduciary responsibility for their welfare. The companies, on the other hand, are concerned that the agreements they make with their lender may reveal trade secrets.

This problem is tractable. Governments and indigenous peoples are primarily concerned about the parts of loan agreements that externalise costs (or benefits) to them or otherwise threaten their sustainability through changes in their livelihoods, environment, or sovereignty. These clauses do not routinely involve trade or financial secrets. Borrowers/underwriters and lenders might be persuaded to disclose those components of the agreement, but – given the mistrust and amount of money involved – ground rules and arbitration would be necessary to avoid disagreement over what is and is not an impact.

3.4 Non-governmental organization strategies and tactics

Indigenous peoples have found sympathetic ears among NGOs, especially where there are no other avenues to air grievances. Scores of non-governmental organizations (NGOs) are focusing on the issue of mining and local communities (See www.minewatch.org, www.moles.org, www.caa.org.au). NGOs show great diversity of objectives and organizational capacities. Some localized organizations focus on particular mining projects. Others assume broader, global policy objectives. Their positions range from support of militant resistance against mining to uncritical promotion of its interests. Be they local or global, many NGOs sharing concerns for social and environmental justice for communities who are ‘in the way’ of mining routinely form mutually supportive alliances.

NGOs deploy an equally wide range of strategies and tactics. These include national and international lobbying, civil disobedience, serving as information clearinghouses, coalition building, community outreach, referrals to other support groups and resources, meetings with the institutional financiers of mining, hosting meetings and conferences, organizing resistance campaigns, and subcontracting to assist in indigenous development or cross-cultural brokerage to interested stakeholders. Problems occasionally arise when NGOs speak out or raise funds on behalf of indigenous peoples without their consent.

Campaigns are a coordinated set of actions designed to influence policy or change the course of particular encounters. Campaigns often take on global dimensions, especially since internet communication has permitted NGOs with limited resources to communicate as easily as large corporations (e.g., Mining Watch Canada, www.miningwatch.ca; Oxfam Australia, www.caa.org.au/index.html/, Project Underground, www.moles.org and www.ienearth.org/mining_campaign.html#project). Recently, Project Underground (www.moles.org) and the Indigenous Environmental Network (www.ienearth.org/mining_campaign.html#project) formed the Indigenous Mining Campaign Project to support indigenous peoples in developing strategies “against the spiritual, cultural, economic, social, and environmental impacts of mining and oil extraction.”

3.4.1 Localized services to indigenous communities

NGOs offer indigenous communities a wide range of localized services including fund raising, on-the-ground research, legal representation, monitoring of environmental and social compliance, training for capacity building including negotiating skills, organizational management and consulting on risks - including evaluation of health threats. Some NGOs employ professional staff while others depend on volunteers, leading to variations in the types and quality of services. NGO staff, like companies, may carry their own presuppositions about indigenous peoples that may not be ethnographically correct.

3.4.2 Global policy advocacy

Global NGOs such as OXFAM, the Center for International Environmental Law (CIEL), and the Bank Information Center (BIC-USA) are focusing considerable energy on policies that guide the financiers and insurance underwriters for the mining sector with specific emphasis upon the UN, World Bank and the regional development banks. This effort extends NGO activities to areas of human rights, indigenous peoples, cultural sustainability, and mining. Of note are the UN instrumentalities and conventions to protect the Earth's biological, linguistic and cultural diversity, including Cultural and Spiritual Values of Biodiversity, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Labour Organization 169, and the UN Draft Declaration on the Rights of Indigenous Peoples. A recurring concern has been the promotion of consultation, self-determination, group rights and protection of Indigenous cultural patrimony. In the absence of industry action, Community Aid Abroad in Australia has established its own ombudsman program of conduct for mining companies working with indigenous communities (Oxfam 2001) which last year (2001) provided detailed reviews of seven cases of mining company's overseas operations in the Asian-Pacific Region. There have also been demands for standards, benchmarks, and accountability of mining companies within their home country for the overseas treatment of indigenous peoples.

3.4.3 Precedent legal advocacy

While there have been a series of failed legal actions against oil and mining companies (Freeport MacMoRan, BHP, and Texaco) by NGOs, the Indian Law Resource Center scored an unprecedented, possibly landmark victory by challenging another extractive industry that may set a precedent for the mining sector. On September 17, 2001, the Inter-American Court of Human Rights ruled that the government of Nicaragua violated the human rights of the Mayagna Indigenous community of Awas Tingni. The community had been attempting to protect their lands and resources from exploitation by a Korean logging company and the possibility of mining. When the Nicaraguan legal system failed to address the community concerns, the Indian Law Resources Center filed a petition before the Inter-American Commission on Human Rights against the government of Nicaragua, claiming it was violating international law by ignoring traditional land ownership in granting the logging concession without informed participation of locally affected communities. In 2001, Nicaragua was ordered to demarcate the traditional lands of the Awas Tingni community and establish new legal mechanisms to demarcate the traditional lands of all Nicaraguan

indigenous communities in Nicaragua. James Anaya, a lead attorney involved in this case concluded that “The precedent applies directly to all states in the Americas that are parties to the American Convention on Human Rights and, indirectly, to all other countries where indigenous people live.”

In a similar vein, NGOs have also filed formal complaints to regulatory agencies on behalf of the interests of indigenous communities. For example, the Mineral Policy Institute and the Australian Conservation Foundation filed an official complaint to the Australian Securities Commission against the world’s largest mining corporation, Rio Tinto, alleging that the company management misled shareholders over environmental and human rights impacts at its Freeport mine.

3.4.4 Indigenous NGOs

Of late, indigenous peoples have formed their own NGOs. Most are localized, focusing on issues specific to their ethnic groups – but not necessarily community based. Others are national and regional, and a handful are global and pan-tribal. At the local level, these organizations may not necessarily be incorporated, formal organizations, but built on the efforts of part-time, unpaid volunteers working to build the capacity of their peoples. When mining occurs within their sphere of interest, these non-militant indigenous “NGOs” spring into action, using their special abilities to mobilize and advocate for indigenous peoples. Increasingly, non-indigenous global NGOs have found it useful to form alliances with indigenous NGOs and encourage their development. International NGOs, such as Cultural Survival Inc. have supported the formation of indigenous NGOs for over 30 years as has a small department inside the World Bank. At least one government has tried to offer resources to such groups in the hope of developing indigenous development plans (Cultural Survival Quarterly Winter 2000 www.cs.org, www.bloorstreet.com/300block/aborintl.htm#3 and <http://lanic.utexas.edu/la/region/indigenous>).

Very modest NGO partnerships have also emerged to support communities dealing with mining, i.e., the Indigenous Campaign Mining Project as a cooperative venture of the Indigenous Environmental Network (www.ienearth.org/mining_campaign.html#project), and Project Underground (www.moles.org).

3.5 Indigenous Peoples Strategies and Tactics

We will be strong as long as we are together.

Luci Tapahonso (Navajo) poet

Indigenous peoples cling steadfast to the twin issues of self-determination (autonomy) and cultural survival. A small body of international indigenous law has emerged to recognize the inherent rights of indigenous peoples to their land and heritage. Appealing to these rights for justice may or may not be an effective strategy for the achievement of sustainable indigenous futures. The on-the-ground impact of international law for indigenous peoples and mining, understandably, has been most noticeable in the formal ratification of human

rights covenants by 14 countries (e.g. ILO 169)¹² and in the recent court victory for Amerindians in Nicaragua in the Inter-American Court for Human Rights. This latest precedent have positive reverberations for indigenous peoples throughout Latin America.

The central theme of the indigenous struggle is for a cultural group to have the right to determine their priorities: a) on their own land, b) on their own terms, and c) within their own time frame.

3.5.1 Plans A and B

Awareness of the impact of mining is increasing. Indigenous peoples are becoming better organized and informed (both internationally and locally) and gaining increased support from non-indigenous communities and organizations – especially from environmental and human rights concerns. As a result, there have been increasing costs to mining companies who have ignored the rights of indigenous peoples. We have categorized indigenous responses into two major categories which we call Plan A and Plan B.

Given the history of mining projects being forced upon indigenous peoples, it is not surprising that the strategy taken by many is one of either uncritical acceptance or full scale resistance. They turn to known resistance strategies and tactics for dealing with an outside threat: appeals to government, civil disobedience, appeals to sympathetic NGOs and religious groups, and so on.

Uncritical resistance or acquiescence is what we term Plan A. The “just say no” or “just say yes” strategies have a lot in common. Both strategies will attract outside supporters whose primary interest may not be the cultural survival of the affected peoples. To win a battle in what, for them, is a much larger war, advocates on either side of the issue are likely to understate or misstate the project’s potential impacts—both positive and negative. Rest assured that as the proponents and opponents of a project argue over their Plan As, someone, somewhere, is preparing Plan B as an alternative to resistance and confrontation. To appreciate the impact on indigenous peoples when resistance fails, imagine a time beyond the encounter. From the perspective of the mining, gaining access to indigenous land represents success. Short-term promises may have been made and kept before shutdown. The protests are history, media cameras have been turned off and the microphones packed. Long ago, protest signs were turned into kindling and the environmental warriors have broken camp and moved to other battlefields. This is a time when project-related opportunities—primarily unskilled construction jobs—have almost disappeared. Indigenous wealth, as described earlier, has been eroded. Traditional leaders have been undercut or deeply scarred in skirmish after skirmish. Factionalism has fractured kinship bonds. Single mothers are raising children fathered by outside workers. Some original residents have moved to new towns where they live out their days in poverty and destitution.

A people’s chances for cultural survival increase when they develop their own Plan B to deal with a proposed project. An indigenous Plan B may be developed concurrently with Plan A.

¹² Peru, Paraguay, Norway, The Netherlands, Mexico, Honduras, Guatemala, Fiji, Ecuador, Denmark, Costa Rica, Columbia, Bolivia, and Argentina.

A good Plan B should have at least eight components (Downing and Garcia-Downing 2001, Moles 2001).

1. Examination and explanation of the project's economic and legal aspects to the community in a way they will understand.
2. Full assessment of the project's risks and benefits (see previous discussion of risks and indigenous wealth).
3. Budgeting and organization of actions to mitigate each risk.
4. Determination, by the people, of how the project fits within their cultural vision.
5. Arrangements of institutional and financial steps that assure the project's benefits are opportunely and transparently allocated to the peoples.
6. Distribution arrangements are focused on a common community endeavor and/or distribution within the group, as decided by the beneficiaries.
7. Preparation of strategy for negotiating with the project promoters, financiers, government and other key stakeholders. The negotiations focus on benefit-sharing arrangements over and above risk mitigation.
8. Formalization of negotiated arrangements with legally binding instruments.

Properly done, a good Plan B offers answers to the all-important question: "if this particular project is approved, rejected, or modified, what will happen to my people?"

Indigenous Plan Bs have proven successful (Hermission 1999, Castaneda 1992). The Tahltan of British Columbia in western Canada issued a declaration of their sovereign rights to their land, including a section to be retained for their exclusive use in perpetuity. They affirmed that all questions concerning their lands and resources be settled by treaty with the province and federal governments (Natural Resources Canada 1990). The Tribal Council also issued a resource development policy statement with protection of the natural environment as the first requirement for development. The Tahltan not only were determined to maintain control of their land, but also took control of the mining company equipment when formal agreements were not opportunely ratified. The Tahltan National Development Corporation (TNDC) was formed as an umbrella organization to promote large-scale business ventures serving the mining operation and taking advantage of other opportunities. The Tahltan Training Centre was established and continues to train students in new skills needed by regional employers. Working under their Plan B, a cooperative mining company is working with the Tahltan - Golden Bear Project (Chevron Minerals Limited and North American Metals (B.C.) – and support from the Canadian government significantly increased. At the end of the 1990 fiscal year, the TNDC employed 82 people (90 percent were Tahltan) and paid in wages approximately Canadian \$2.1 million.

The cost of a Plan B is small compared to industry's project preparation costs. The duration of the planning, however, may be longer. The capacity of tribal groups to prepare a participatory Plan B varies greatly. Some have only a handful of tribal members with secondary school education. Other groups have the capacity to prepare a Plan B with minimal external technical assistance (Castaneda 1992). Most lack legal representation. Non-indigenous project promoters demonstrate confidence in the virtues of their proposed

endeavor and good will toward the indigenous community when they are willing to underwrite the costs of Plan B. Alternatively, organizations active in Plan A should be willing to stand behind their commitment and pay some of the costs associated with Plan B. Non-indigenous NGO stakeholders may demonstrate their support for the community by their willingness to donate time and technical assistance. This cost sharing must be undertaken without obligation on the part of the people. To trade underwriting the costs of preparing Plan B for access to land or promised eternal resistance is a ruse, comparable to paying for a doctor with one's life.

Mining promoter's access to capital is opportunistic, often making project time lines brutally short. Consequently, a people may be pushed to make decisions within a timeframe too brief for consensual agreements. Pressures to speed up the process should be folded back on the promoters. If they are in a hurry, then – as with all projects – accelerating the schedule dramatically accelerates the costs of Plan B.

A good Plan B is a plan for cultural survival, not a plan for surrender. A viable Plan B may be more important than a good Plan A. A willingness to prepare a Plan B indicates confidence and a desire to move beyond unequivocal support of or resistance to a project. A well-executed Plan B will alter project financing, making clear the differences between payment for damages, risk mitigation, and benefit-sharing arrangements. It may not end factionalism, but it focuses discussions away from exhausting arguments and onto very specific topics. Plan B builds respect by redefining the project owners' and financiers' relationships with the indigenous peoples. The act of taking control—producing and ultimately implementing their Plan B—is a significant step toward self-determination. And, most importantly, by laying out a project's full social and economic dimensions, a good Plan B influences whether or not Plan A ever takes place.

3.6 Trends and countertrends

A strategy for dealing with indigenous peoples ranks low on the priorities of non-indigenous stakeholders. It is not illegal in most places for mining to harm indigenous peoples, nor is inaction. Non-indigenous stakeholders are not obligated to take any proactive steps to help indigenous peoples. And, apart from harm that might come to securing financing for certain lenders, the business case for doing the right thing is thin. It will come as no surprise, therefore that few stakeholders, including the indigenous peoples themselves, have well-articulated strategies to reduce the known threats mining poses to the sustainability of indigenous peoples.

Mining companies track through different, but not uncharted, territories and legal frameworks. The rules of the game change from place to place – even within the same country. There are no industry-wide social standards and faint concern for risk assessment, social development, or indigenous cultures. International legal frameworks are routinely ignored. NGO and development bank guidelines are not legally binding, and without tangible, competitive rewards for compliance. Tactical, not strategic, thinking dominates. As encounters mature, strategies and tactics shift, especially in cases of prolonged conflicts. These shifts seem to correspond to the revelation of undisclosed risks as the project matures (Cook 2001).

Our review also reveals that indigenous peoples are not treated as legitimate “stakeholders” in an encounter, in the full, participatory meaning of the word. In places where indigenous peoples have gained stronger legal rights, such as in Australia, Canada and the United States – more progress is being made.

In developing countries, they are almost never afforded the right to timely, prior informed consent. Non-indigenous stakeholders cut deals and make arrangements for the use of indigenous peoples’ lands without their participation and knowledge. Indigenous peoples become stakeholders when they have the right of prior informed consent (PIC). The issue is not simply whether or not indigenous communities have the power of veto over development, but whether or not they have a voice and vote in determining the use of their resources and destiny as peoples (Downing and Moles 2001). PIC is technically challenging, but possible – since technical concepts must be presented to an often non-technical culture. PIC does not, in and of itself, give people the power to consider options for their destiny because many indigenous groups have no experience in evaluating such material. If planning is done, it is externalized and done for, not by, the peoples (Whiteman and Mamem 2001). Such a situation limits communities to being informed and giving or not giving their consent - hardly an exercise that leads to commitment or ownership of a plan. For many, the lack of PIC or top-down PIC without active participation of the people echoes the recurrent theme – loss of sovereignty. A negative feedback loop can begin in which the lack of capacity or PIC of the group leads to a mistaken rejection of a viable alternative.

The major strategic and tactical trend is that this is a time of broad stakeholder experimentation with a wide range of organizational and financial arrangements. The alliances appear to have countervailing impacts on indigenous peoples. The ancient alliances between government and the mining industry continue to dominate encounters, fortified by antiquated doctrines of compensation and eminent domain. But rearrangements are appearing, including:

1. Global initiatives to encourage free trade are resulting in a rewriting of mining laws – sometimes to the detriment of indigenous rights (e.g. the Philippines). The IDB initiative to bring indigenous peoples into the redrafting process and clarify their rights within mining codes may be a countertrend.
2. A change in the traditional role of government, whereby it facilitates indigenous, industry, and sometimes NGO partnerships. For example, beginning in 2001-02, the Australian government is providing about 1 million dollars over a four year period in grants to promote mutually beneficial partnerships between the mining industry and Aboriginal communities for training, employment and business opportunities.
3. Non-governmental coalitions and alliances also are increasing their outreach and advocacy. Such is the case in the Africa-Canada Partnership, an NGO alliance that focuses on human rights abuses in African mines. (www.partnershipafricacanada.org).
4. Financiers and risk insurance underwriters are building expanded alliance initiatives with the private sector, stepping beyond the banker/borrower relationship and assuming an active, minority equity position on mining investments (www.IFC.org for listing of the International Finance Corporation holdings).

In contrast, coalitions of indigenous peoples are more localized, occasionally regionalized, and rarely pan-indigenous. Attempts to form indigenous coalitions beyond the local level face serious linguistic, cultural, and financial obstacles. Occasional conferences, such as those organized by MMSD in Perth and Quito (see results on www.iied.com web publications) and the MiningWatch Canada and Canadian Consortium for International Social Development workshop revealed the commonalities in encounters (Rogers et al 2000). None of these forums claim to be representative. The problem of how to conduct a global indigenous consultations haunts other sectors as well (Posey 1999).

As alliances grow, so does the potential for conflicts of interests between stakeholders. There are many of these. The conflict of interest occurs between the government's fiduciary responsibilities to the local indigenous peoples and its desires for revenues as a business partner. In the Cordillera Blanca range of the Andes, local indigenous peoples argued that the Peruvian government has not addressed their concerns over water because it is part owner of the Antamina mine. A comparable problem emerges in Papua New Guinea, the government owns 30 per cent of the Ok Tedi OTML. PNG's apparent resolution was to reserve 2.5 per cent of its share for local landowners and another 12.5 percent on behalf of the people of the Western Province, and retain the rest for itself. www.oktedi.com/news&reports/response.htm in 2001, the PNG passed legislation giving BHP immunity from future liabilities for the environmental damages of its Ok Tedi mine, with BHP moving 52 percent share of the mine into a development trust fund (Multinational Monitor 2002)

4 Toward successful sustainable outcomes

A few decades ago, it might have been fair to argue that increased awareness of the issues might lead to more sustainable encounters between indigenous peoples and mining. But not now. Non-indigenous stakeholders know the risks to sustainability posed by mine developed near or on their lands. And, thanks to increased literacy, high speed communication, and active non-governmental organizations, even remote indigenous groups are becoming more aware of the risks. Company claims that a few unskilled jobs or training will offset these risks is being challenged. At this point, avoidance of indigenous questions increases the risk of human rights complaints or and costly, downstream litigation. Indigenous peoples and the international community have placed empowerment high on the agenda. In this emerging arena, empowerment is understood to be not a product of compensation for mining development related damages. It is not training people without sustainable employment. It is not gift-giving. It is not a mining company agreeing to take over the role of making welfare payments in place of the government. And it is not outsiders promoting what they feel are good alternative lifestyles for indigenous peoples. As President K. R. Narayanan of India said:

“Let it not be said of India that this great Republic in a hurry to develop itself is devastating the green mother earth and uprooting our tribal populations. We can show the world that there is room for everybody to live in this country of tolerance and compassion....”

Address to the Nation on Republic Day January 25, 2001

4.1 Probability of sustainability model

Empowerment begins with tolerance and compassion. And, from the perspective of sustainable development, empowerment means that indigenous peoples do not diminish but rather improve their livelihoods and enhance their cultures in an encounter. *The probability of an empowered, sustainable outcome increases as each of 14 elements is brought into an encounter:*

1. Sovereignty is respected and strengthened.
2. The rights and access to indigenous land and nature are secured.
3. At the beginning, both indigenous and non-indigenous stakeholders' presuppositions about one another are aligned with fact.
4. The desired outcomes of the encounter for indigenous peoples emerge from meaningful, prior informed consent and participation.
5. Non-indigenous stakeholders fully and opportunely disclose to the indigenous group their plans, agreements and financial arrangements related to the indigenous group in a culturally appropriate manner and language.¹³
6. Likewise, the non-indigenous stakeholders identify and disclose all the risks of a proposed mining endeavor. Full risk assessment means not only identification of the threats posed by the loss of land - but also the full range of social, economic and environmental impacts.
7. Prompt unambiguous institutional and financial arrangements to mitigate each risk.
8. Provisioning of benefit-sharing arrangements that step beyond compensation for damages.
7. Indigenous peoples, as an informed group, have the right to approve, reject, or modify decisions affecting their livelihoods, resources, and cultural futures.
8. Should restoration of a disturbed habitat prove impossible, then the non-indigenous stakeholders make provisions for an improved habitat that supports a lifestyle acceptable to indigenous peoples.
9. The basic human and civil rights are protected, as specified in international conventions.¹⁴
10. The focus of the encounter is on protecting indigenous wealth, especially their social relations that guide the sustainable use of their natural resources.

¹³ Culturally appropriate means that discussions, information sharing, and decisions occur in the group's language and routine formats." High illiteracy of indigenous peoples creates demands to use specialized methodologies to assure communication (for a sampling of methods, see Downing 1995, a sampling of culturally appropriate methodologies used with the Pehuenche Indians see www.ted-downing.com).

¹⁴ The Rio Declaration on Environment and Development, the International Convention on the Elimination of All Forms of Racial Discrimination, ILO Convention 169, Agenda 21, the OAS Declaration on the Rights of Indigenous Peoples, the UN Draft Declaration on the Rights of Indigenous Peoples and the UN Biodiversity Convention.

11. Financial and institutional arrangements are forged that bridge the discrepancy between the multigenerational time frame of indigenous peoples and the short-time frame of mining.
12. A guarantor to assure compliance with and funding of any negotiated and mutually satisfactory agreements

The more of these elements that are incorporated in the encounter, the greater the chances for a sustainable outcome.

Given the uncertainties of an encounter, the prudent approach is not only to sagaciously identify, avoid, and mitigate risks but to also focus on benefits over and above compensation and rehabilitation for damages. Unquestionably, the prudent approach demands long term commitments, innovative solutions, financial and institutional guarantees, and the use of professionals experienced in the issues of social development and indigenous peoples. And it also requires continual monitoring by technically competent, independent observers of these indicators provide all stakeholders with the opportunity to take corrective actions.

4.2 Proposed “Precautionary Principle for Mining in or Near Indigenous Peoples”

Given the uncertainties and extreme risks, we feel it best to extend the environmental precautionary principle approved in Rio 1989 to the impact of mining on indigenous peoples. Adapted, our proposed *Precautionary Principle for Mining in or near Indigenous Peoples* would read:

Non-indigenous stakeholders in mining shall use the precautionary approach to protect the indigenous peoples and the environment that supports them. Mining cannot take place without their prior informed consent and participation in their self-defined indigenous development. Where there are threats of serious or irreversible damage, scientific and economic uncertainty shall not be used as a reason to postpone cost-effective measures to avoid and mitigate risks to indigenous livelihoods and cultures.

Biosketches

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