

Race to the Bottom, Take II



About the Publication

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ECA Watch is an organizing and outreach feature of the larger international campaign to reform Export Credit, Finance and Insurance Agencies (ECAs). Participants in the campaign include environment, development, human rights, community, labor, anti-corruption and other non-governmental organizations and bodies. The goals of the campaign are described in the Jakarta Declaration on ECA reform (see Appendix). The actions of the ECA campaign include advocacy, grassroots organizing, lawsuits, research, education and media engagement. Targets of the ECA campaign include specific ECA-backed projects and ECA policy reforms taking place at national and multilateral levels. For more information, see www.eca-watch.org

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Current OECD guidelines for environmental and sustainable development review of export credit agency-backed projects fail to achieve their purpose. Significantly destructive projects that violate host country law, international environmental standards and international human rights and labor laws continue to be considered and supported by ECAs. This report presents a civil society proposal for reforming the OECD Common Approaches on Environment and supports the proposal with nine case studies of ECA-backed projects from all over the world.

Background to OECD Common Approaches Rev 6

Export Credit Agencies (ECAs) are publicly-mandated institutions that provide government-backed loans, guarantees and insurance to companies from their home country in an effort to promote trade and investment, often in developing and emerging markets. ECAs rank among the largest source of public international finance, committing over \$500 billion in trade finance in 2001 and supporting approximately 10% of world trade. But this investment has not necessarily brought positive benefits to, and has in some cases harmed, the affected communities and recipient countries.

Over the past fifty years, ECAs have supported countless projects in the mining, nuclear, pulp and paper, oil, coal and gas sectors, which have had devastating environmental, social and human rights impacts. Consequently, since 1997, an international coalition of Non-Governmental Organizations (NGOs) has been drawing public scrutiny on the adverse consequences of these ECA-backed activities.

In May 2000, 347 NGOs from 45 countries called for ECA reform in a statement called the Jakarta Declaration. The declaration demands greater transparency, public access to information and consultation with civil society and affected people; binding common environmental and social guidelines and that

meet existing international standards on finance; the adoption of explicit human rights criteria; the cessation of finance to non-productive investments, such as military purchases or nuclear power plants; and the cancellation of ECA debt for poor countries. (See Appendix)

Following this declaration, increasing international press attention, and ministerial mandates from the Organization for Economic Cooperation and Development (OECD) and the Group of Eight largest economies (G-8), policy negotiations on environmental issues began at the OECD Working Party on Export Credits and Credit Guarantees (otherwise known as the Export Credit Group, or ECG). In December 2001, the members of the ECG finalized a proposed common set of environmental guidelines for ECAs: “Draft Recommendation for Common Approaches on Environment and Officially Supported Export Credits: Revision 6” (“Common Approaches” or “Rev 6”).

Rev 6 was intended in part to meet the OECD ministers’ mandate that export credit policy “contribute positively to sustainable development and should be coherent with its objective,” but also to level the playing field for ECAs and avoid a ‘race to the bottom’ in which ECAs compete against each other to lower environmental and other standards in search of more competitive advantages for their companies. Yet Rev 6 has fallen far short of these objectives.

Despite broad agreement among most ECAs on Rev 6, the United States (US) rightly refused to endorse the document. The US judged Rev 6 to be insufficient on two counts: its weak information disclosure requirements, and its “benchmarking” approach of choosing relevant standards and procedures on a case-by-case basis instead of using one common baseline requirement. Nevertheless, the rest of the ECG members decided to adopt the text on a voluntary

basis, and all agreed to review the implementation of Rev 6 within two years, in 2003. In April 2003, the chair of the ECG

announced that the group was going to reopen the negotiations in an attempt to come to a consensus agreement with all the members, including the US.

Since its adoption, NGOs have been very critical of Rev 6 due to its inability to reduce the negative impacts of ECA-backed projects on the ground and to protect the environment and project-affected people's human and labor rights.

Points of Concern in Rev 6 and Recommendations for “Rev 7”

Below is a detailed analysis of the key factors leading to the failure of Rev 6 to comply with the OECD and G-8 mandates and government commitments to promoting sustainable development. Specific proposals on how this can be corrected are presented. See the full text of NGO-recommended changes to the OECD Common Approaches Rev 6, dubbed the NGO Rev 7 Proposal, at www.eca-watch.org.

1. Lack of Commitment to Sustainable Development

Critique:

When the OECD Common Approaches were first developed during months of closed-door discussions, the government negotiators sought consensus by identifying minimum guidelines all could agree to. For this reason, Rev 6 focuses primarily on environmental issues. At the same time, controversy over ECA support for the Ilisu dam in Turkey existed, focusing attention on the fate of 75,000 Kurdish and other minorities who were to be displaced. This project led the negotiators to specifically mention resettlement and cultural property issues, and make reference to ethnic or other vulnerable groups. So while Ilisu made it clear that the negotiators needed to consider some social impacts, measures to fully address sustainable development as a whole, including civil, political, economic, social, cultural and labor rights, are to date non-existent. This practice is consistent with ECAs' insistence on defining their business as purely trade promotion. After the Doha Round for Sustainable Development of the World Trade Organization, this narrow definition of the role of ECAs is unacceptable.

For example, Rev 6 makes only a passing reference to “areas of importance to ethnic groups,” and the possible need for a “resettlement or social development plan,” but it fails to set specific international standards that must be adhered to. And while Rev 6 is not explicit on what environmental standards should be applied, it is completely silent on the social and economic aspects of ECA-backed projects. It is unclear what specific actions ECAs and the projects they back must take to address these issues and promote sustainable development.

Proposal:

Rev 6 should be revised to include in its objectives, standards and procedures a commitment to sustainable development encompassing economic, social, cultural and environmental factors as stated in numerous multilateral meetings and agreements since the Rio Earth Summit in 1992.

The NGO Rev 7 Proposal replaces the current focus on environmental review with the broader and more complete principle of sustainable development review, including social and economic impacts. To reflect this change, human rights assessments, stakeholder consultations and mechanisms to ensure project compliance with given standards have been added throughout. Project-affected people should not simply be the bearers of negative impacts, rather they should receive positive development benefits from projects. Companies can insure themselves against risk; people and the environment cannot.

The criteria and standards for human rights compliance should be based on international treaties and conventions.¹ Special attention to human rights should be given to vulnerable groups, and in countries with restricted human rights and freedoms. This would require a special analysis in countries such as China (See the Three Gorges Dam case study), and Azerbaijan, Georgia and Turkey (See the BTC Pipeline case study), and where vulnerable groups are present, such as indigenous peoples, other minorities or vulnerable groups (See the Camisea gas project and the Lao PDR Sepon mine case studies).

¹ Especially the International Bill of Human Rights and the five core ILO Conventions plus ILO Convention 169 on Indigenous Peoples among others, and including the conventions, declarations, case law, statements and clarifications.

2. Unreasonably Limited Scope

Critique:

Currently, Rev 6 applies only to ECA-supported credits, but not to guarantees or investment insurance, for projects seeking credits above Special Drawing Rates (SDR) of 10 million (approximately US\$14 million or 12.8 million €), whose repayment term is two years or more, and that are classified as “Category A.”² Such major projects constitute approximately ten percent, a mere fraction, of the total operations supported by ECAs. The limited scope means, for example, that the German ECA, Hermes Kreditversicherung, A.G. (Hermes) could provide US\$ 35 million in support to the Tehri dam in India, a project that will forcibly displace nearly 100,000 people and not require an EIA, since it was only providing a guarantee, not credit. (See the Tehri Dam case study)

Even then, parties to the voluntary Rev 6 are only “expected to” require an Environmental Impact Assessment (EIA) for large projects in or near sensitive areas and for large greenfield projects in sensitive sectors. This critically deficient definition leaves out a whole range of projects that have the potential for significant adverse environmental impacts even though they are not large scale projects nor in the designated sensitive areas or sectors.

Proposal:

In order to fulfill the mandate given by the OECD and the G-8, the guidelines must be extended to all ECA-backed projects regardless of the type of support, the amount, the duration of repayment, or the size and location of the project. Simple pre-screening could determine which projects might have significant adverse impacts, and which not, but all projects should be screened and Sustainable Development Impact Assessments should be required for all Category A projects.

The definition of “Category A” must be expanded to reflect the broad range of sustainable development impacts, including potential economic, social, and cultural impacts as well as an assessment of the political and civil rights context of project-affected people. This does not only mean considering human rights abuses as a factor in assessing the political risk insurance to be levied on a project, rather it requires analyzing the potential human rights components and impacts of each project. For example, people who cannot exercise their civil and political rights cannot meaningfully participate in required stakeholder consultations.

² Category A projects are defined as those having potential for “significant adverse environmental impacts. [and]... should, *in principle*, include projects in sensitive sectors or located in or near sensitive areas.” [emphasis added] Revision 6 provides an “illustrative list” of sensitive sectors and areas based on the EBRD Environmental Policy and Procedures.

3. The Lack of Consultation, Transparency, and Public Access to Information

Critique:

Fully recognizing the need to keep commercially sensitive information confidential, there is no justifiable reason to withhold environmental and social impact assessment information from project-affected people and the general public. The fundamental purpose of sustainable development impact assessments is to improve project quality through public disclosure and discussion of potential impacts and needed mitigation or avoidance measures. Following the example of the International Finance Corporation (IFC) and the World Bank, the European Bank for Reconstruction and Development and other public institutions, ECAs should adopt a presumption in favor of disclosure.

Rev 6 requires no ex-ante disclosure, only ex-post aggregated information. There is usually no way for project-affected people to know if an ECA is considering support for a project or whether conditions have been required, even after support has been provided. Meanwhile, many ECAs are also not subject to national access to information acts. It is thus impossible to verify appropriate classification of projects, identify environmental and social impacts missed by the project sponsor's assessment, or highlight mitigation measures that could substantially improve the project and reduce project risk.

The current lack of access to environmental and social impact assessments makes it impossible for citizens to participate in a meaningful way in project decisions that directly affect them. This violates a number of the civil and political rights protected under the International Covenant on Civil and Political Rights. The current Rev 6 approach is also in potential conflict with European Convention on Human Rights, and, in the European Union (EU), adhering to Rev 6 provisions puts member states in violation of the law under the new European Directive on Public Access to Environmental Information and Article 1 of the Nice Treaty.

Proposal:

The public disclosure of satisfactory sustainable development impact assessments, minus any truly commercially-sensitive information, should be a pre-condition of ECA support.

Public access to environmental impact assessments for project-affected communities and interested parties, prior to project approval, is fundamental to inform citizens of the potential risks they face. ECAs should make project assessment information readily available to affected communities, NGOs and other interested parties at least 120 days in advance of an application being approved. This information should include the sustainable development impact assessment for all projects, and the names of the companies involved.

Transparency is in everyone's interest – from the public, to shareholders, to the companies, to the ECAs and their governments:

1. It improves quality and outcome of projects by carrying out more comprehensive due diligence, and therefore reduces risks.
2. It is essential to meeting obligations under human rights treaty obligations. For example, the European Convention of Human Rights (ECHR) requires that those whose property rights are affected be properly informed of risks.
3. It is good for shareholders, as they have a right to know more about the projects in which companies are involved in order to assess the reputational risks of companies.

4. The Lack of Common Standards and Operational Policies

Critique:

Rev 6 states that ECAs should use as a “benchmark” the practices of International Financial Institutions (IFIs) such as the World Bank Group, regional development banks, “and other internationally recognized environmental standards.”

It encourages an ad-hoc, discretionary approach where ECAs apply different sets of standards, or do not apply them, depending on the whim of an ECA and the public pressure they may face vis-à-vis a particular project and its sponsors. This contributes to trade distortions by failing to ensure a level playing field in environmental standards across ECAs – a stated objective of the OECD negotiations.

Though intended to simplify matters, the benchmarking approach is in fact overly bureaucratic, time- and staff-intensive and fails to provide exporters with the clarity and predictability around the standards they are expected to meet. For example, in reviewing the Romanian Cernavoda 2 nuclear power plant, the ECAs involved had no clear guidelines on nuclear safety to follow, and had to go through a lengthy, process of devising one specifically for that project. The result was a lowest-common-denominator solution. (See the Cernavoda 2 Case Study)

By allowing discretion vis-à-vis internationally recognized standards, Rev 6 contradicts the letter and spirit of the OECD’s own Guidelines on Multinational Enterprises. This practice carries heavy reputational risks for ECAs as there is no assurance that international environmental standards are considered in the ECA approval process.

Proposal:

All ECA-supported projects should be required to adhere to specific and binding sustainable development standards and procedures, which should be reviewed periodically on the basis of the highest international standards and practices as identified by an independent body of experts.³ All ECAs should adopt an exclusion list of types of project that are too harmful to the environment and to sustainable development to be eligible for public support.

ECAs must comply with host country standards, laws and procedures, particularly when these are more stringent than the international standards and procedures adopted by ECAs. The increasing use of private project agreements between transnational companies and host countries that override and weaken national law in project-affected areas, should not receive ECA support. The BTC Pipeline’s “Host Government Agreements” are an example of a project whose contracts deprive project-affected communities of legal redress when complaints arise, and by their nature, violate host country law. (See the BTC pipeline Case Study)

³ In this regard, 14 international finance banks are one step ahead of ECAs. Although weak on disclosure and accountability, and adopted on a voluntary basis, the Equator Principles represent a single set of international standards through which banks take the environment into account in their project financing.

5. Lack of Monitoring and Compliance Mechanisms for ECA-Imposed Conditionalities and other National and International Obligations.

Critique:

Currently, few ECAs monitor project compliance with ECA-imposed conditionalities and other national and international obligations. Of those that do conduct post-approval monitoring, monitoring data is rarely released to the public. Implementation of conditionalities is left to the discretion of the project sponsors, with little or no public assurance that it is actually carried out. Furthermore, Rev 6 does not mandate specific procedures to review violations or address non-compliance by project proponents.

None of the provisions set out in Rev 6 are enforceable – there are no public reporting requirements, no enforcement mechanisms, and no procedures for redress for project-affected peoples in the event of violations of their rights or default on specific conditionalities required by the ECAs.

Proposal:

ECAs should conduct monitoring visits and require monitoring reports on the contract conditions and other national and international obligations associated with implementation of the projects they support. Environmental and other sustainable development conditions placed on projects should be published in the ECA country and in the host country to facilitate public verification and institutional accountability. The disclosure of conditions will allow people on the ground to report on whether the conditions are being met or whether the project presents some unforeseen shortcoming that could jeopardize project completion. NGOs have a positive role to play in project monitoring.

A compliance mechanism should be established to help solve emerging problems and to evaluate policy compliance. Its objectives should include:

1. Constituting an independent fact-finding organ to which local communities and other stakeholders can appeal in case of problems with an ECA-supported project;
2. Ensuring that activities backed by ECAs abide by all human rights, social and environmental policies and host government law;
3. Providing the affected communities with effective redress; and
4. Applying a range of sanctions on client companies, including the suspension of current and future support, if norms are not respected.

Introduction to the Case Studies and Summary of Findings

The nine case studies presented in this report include projects that were either A) approved after Rev 6 went into effect, B) reviewed under national ECA environmental impact review procedures that are largely similar to Rev 6 and were enacted in anticipation of the Rev 6 agreement, or C) are currently or will be under active consideration by one or more ECA. They were selected to illustrate how projects with significant, adverse and unavoidable sustainable development impacts have continued to receive (or are likely to receive) publicly-backed financing, guarantees or insurance, despite the intent of Rev 6 to screen out projects with the worst impacts.

The cases selected present a range of projects from Asia, Africa, Latin America and Eastern Europe. They include examples from the key sectors supported by ECAs: oil, gas and mining, dams, power plants, and the pulp and paper industry. In each case study, the authors have analyzed environmental impacts, human rights impacts, financial impacts (including financial viability, debt-creation, tax holidays and negative revenue impacts), disclosure and public consultation practices, and violations of host country laws and treaty obligations. The case studies also analyze the projects against Rev 6 requirements.

The case studies were prepared by organizations actively involved in monitoring and attempting to minimize the potential impacts of these projects. Local organizations of project-affected people, teamed with international NGOs, have provided the information contained in each of the case studies. In all of the case studies, the lack of publicly-available information has posed a significant challenge to presenting complete information on ECA involvement. Details about reviews conducted, stakeholder consultation conducted, amounts and types of support provided, and dates of review and approval are largely kept secret by ECAs and project sponsors. We have attempted to provide as

complete and accurate case histories as possible, despite this handicap.

The selected cases highlight a number of concerns. These vary in scope from significant long-term adverse and unavoidable environmental impacts, like the destruction of pristine rainforests, marine and riverine ecosystems, to the pervasive denial of project-affected people's political, economic, civil, social and cultural rights such as threatening indigenous peoples' livelihoods and cultural integrity. They include violations of labor rights, such as the core ILO labor conventions on discrimination and equal pay for equal work. Violations of host country law and treaty obligations are a common occurrence, particularly ignoring environmental review and protection laws and failing to protect citizen's right to livelihood. Significant instances of forced displacement without adequate – or in some cases any – compensation also run through the cases, such as the 1.2 million people being forcibly displaced by the Three Gorges Dam in China.

Together, the cases demonstrate that the limited scope of Rev 6 means projects fail to receive adequate review and their most significant impacts are not avoided. The cases illustrate how the absence of a common set of clear review procedures and a single set of unified international standards has allowed ECAs to apply highly uneven, ad-hoc review requirements to project proposals. Finally, the cases show how the lack of post-approval monitoring and compliance mechanisms results in unaddressed harm to project-affected communities.

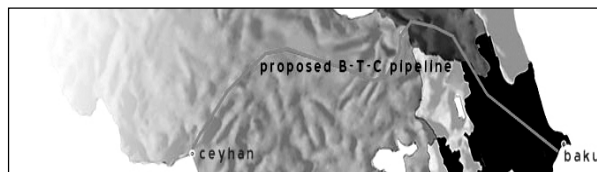
Azerbaijan, Georgia & Turkey - BTC Pipeline

Project Summary

Major international funders are currently deciding whether to provide up to \$2.5 billion of public money to finance a major new oil project – the Baku-Tbilisi-Ceyhan (BTC) oil pipeline. The 1,760km pipeline, which would be buried along its entire route except for surface facilities, would transfer one million barrels of crude oil per day from Baku on the Caspian Sea coast, via Azerbaijan and Georgia, to the Turkish port of Ceyhan on the Mediterranean. The oil would be supplied to international markets, predominantly in the US, via tankers loaded at a new marine terminal. Approximately 36,000 people along the pipeline face displacement, military repression and surveillance, economic disruption, ethnic discrimination and environmental damage caused by construction. Spills from the pipeline could affect an unknown number of others living in the regions affected. Host Government Agreements (HGAs) signed with each country along the pipeline's route exempt the BTC Consortium, led by British Petroleum, from any obligations under host country laws, violating fundamental norms of national sovereignty and citizen's rights to redress for harm that may be done during the course of the project.

Project Description

British Petroleum is the lead company in the BTC Consortium (BTC Company),¹ which has already started to build the pipeline in violation of EC law and the project agreements themselves. BP is also the operator and lead shareholder in the offshore oil fields in Azerbaijan which would supply BTC. The route chosen is more expensive than many other possible



BTC Pipeline Route
Graphic: Baku Ceyhan Campaign

Human Rights and Environmental Issues:

- Economic displacement without adequate or any compensation
- Use of notorious paramilitary forces for pipeline security
- Inadequate environmental and social impact review
- Destruction of national parks, sites of scientific and archaeological importance, tourist attractions and revenue earners
- Host Government Agreements trump national laws and international treaty obligations, violate state sovereignty and deny citizens the right to redress

Population and Sensitive Areas Affected:

36,000 people living along the pipeline's route, including ethnic Kurds in Turkey

ECA's Involved:

- ECGD (England)
- SACE (Italy)
- COFACE (France)
- Hermes (Germany)
- JBIC (Japan)
- OPIC (US)
- Ex-Im (US)

Status:

Currently under consideration by 7 ECAs. The pipeline is already under construction

options for Caspian oil exports; construction and financing costs together are estimated to total \$3.7 billion.² Although the legal contracts for the project explicitly state that BTC "is not intended or required to operate in the service of the public benefit or interest,"³ BP has said that the pipeline cannot be built without 70% of the funds, around

\$2.5 billion, either coming from or guaranteed by what BP CEO Lord John Browne has called "free public money," to be provided by Export Credit Agencies and other

International Financial Institutions.⁴

The pipeline consortium is therefore seeking public funds via the International Finance Corporation (IFC), the European Bank for Reconstruction and Development (EBRD) and at least seven export credit agencies.

It is fairly evident why a colossal company like BP, which could easily fund the BTC project from the record \$31 million per day profit it made during the first quarter of 2003, would put itself through the added scrutiny of the public funding process – Baku-Tbilisi-Ceyhan is an unashamedly political project, with attendant political risks from which only the presence of the major IFIs can insulate the company. Indeed, the impetus for the project has come almost exclusively from two sources: the Azeri President, Heidar Aliyev (now allegedly deceased), who has been keen to parlay the country's oil reserves into greater independence from Russia, and above all, from the United States.

The desire of the US to obtain a ready supply of non-OPEC, non-Arab oil from sources over which it holds considerable political sway has always been the driving force behind the creation of major export pipelines from the Caspian,⁵ weakening Russia's influence in one of the world's most strategically important areas merely sweetens the deal. For the governments of Azerbaijan, Georgia and Turkey, the prospect of political gains and the benefits of being affiliates of the US and part of the 'Eurasian Transport Corridor', more than the financial rewards, seems to have persuaded them to sign up to a project with potentially disastrous financial and environmental penalties, not to mention consequences for many of their citizens.

ECA Support

The BTC Consortium has approached at least seven export credit agencies, including the UK's Export Credit Guarantee Department (ECGD), SACE (Italy), COFACE (France), Hermes

(Germany), JBIC (Japan) and OPIC and the Ex-Im Bank from the US. Formal applications for funding have been made to OPIC, SACE⁶ and Ex-Im⁷, and it is anticipated that the latter may provide as much as US\$600 million. As yet, no application has been made to the ECGD, but it is anticipated that the BP will ask for around £60 million.

IFC and EBRD have also been approached for US\$300 million apiece, US\$150 million in direct 'A' loans and another US\$150 million in 'B' loans underwriting or co-financing with commercial banks.⁸ The BTC project was accepted into the IFI funding pipelines on June 12, 2003, giving until early October for the public to raise concerns.

Impacts

Environmental Impacts

The BTC Consortium's rush to push through the project has led to huge gaps in the EIA baseline mapping, meaning that many species of flora and fauna are not recorded, impacts such as fragmentation of habitats are not accounted for

and procedures like Oil Spill Response Plans for Turkey's Yumurtalik Lagoon, a noted habitat of the green turtle, are absent. The EIA consultants have explained these lacunae by saying that mapping will be completed during the process of construction, not exactly best practice.⁹ Also in Turkey, there are reports that the pipeline is being built through a major unexplored archaeological site north of Ardahan.

The BTC pipeline will pass through the buffer zone of Georgia's Borjomi-Kharagali National Park, imperiling the Borjomi mineral water plant which generates a full 10% of the country's total export capital. It will also increase the likelihood of debilitating landslides and other environmental damage, which in turn will speed up pipeline corrosion and possible leaks.¹⁰ Local villages vulnerable to landslides complain that they are not even marked on BP's regional maps.



Onshore oilfields from the Soviet era, south of Baku. The coastline here is littered with rusting derricks and pools of oil. The growth area, that would feed the Baku-Tbilisi-Ceyhan pipeline, is offshore. Photo: Yury Urbansky/CEE Bankwatch

In Azerbaijan, the route passes through the Gobustan Archaeological Preserve. Containing legacies from the eighth century BC, the preserve has been described as the country's Stonehenge. A spokesman for the Azerbaijan State Oil Company summed up the BTC Consortium's impressive attitude to cultural heritage by noting that, "I'm sure [critics of the project] have never even been to Gobustan, but they make a big fuss about it."¹¹

Human Rights Impacts

Forced Resettlement & Lack of Compensation

There have been repeated complaints by people displaced along the pipeline right-of-way that the BTC Consortium is not carrying out the process of compensation in the manner claimed. These include allegations of systematically paying well below market rates for land; imposing rather than negotiating prices, in violation of Turkish law and the project agreements; failing to compensate certain groups of landowners and users; not providing affected people with proper information about their rights; and failing to inform them of the many potential negative impacts of the project.

A recent Fact-Finding Mission to Georgia and Azerbaijan found that in order for BP to maintain its boast that the BTC pipeline will not physically displace anyone, the pipeline is being built directly under people's houses, without compensation.

Harassment of Ethnic Minorities, Exclusion of Women from Consultation

The project takes almost no account of the differential impacts of the pipeline on vulnerable groups, including ethnic minorities, women and the poor. It also fails to mitigate those problems appropriately. Many women and Kurds were effectively excluded from the consultation and decision-making processes.

The attitude of the project sponsors is epitomized by the decision of BOTAS, the state pipeline

company building the Turkish section of BTC, to file court cases against customary users of land to get back the paltry sums of compensation it has paid them. Customary users have no formal land title. In the Kurdish regions of the north-east like Ardahan, that amounts to nearly 90% of people. Kurdish interviewees expressed the opinion that BTC was simply part of an ongoing effort by the Turkish state to displace them from their villages and further their assimilation into the Turkish mainstream.¹²

Paramilitary Security Forces with a Record of Human Rights Atrocities

The legal project contracts for the pipeline, the Host Government Agreements, detailed below, give the security forces controlling the project permission to take action in cases of "civil war, sabotage, vandalism, blockade, revolution, riot, insurrection, civil disturbance, terrorism,

kidnapping, commercial extortion, organized crime or other destructive events."¹³ The extraordinary vagueness of a rubric like "civil disturbance" would be worrying enough in a region with a decent human rights record; in Turkey, where the responsibility for security has been handed to the gendarmerie, a paramilitary force implicated in the very worst atrocities of the civil war against the region's Kurds, it is hugely disturbing.¹⁴



The village of Hacibayram, just 2 miles from the pipeline route - evicted during the brutal war between the Turkish state and the Kurdish PKK
Photo: Greg Muttitt / PLATFORM

Disclosure and public consultation

Repeated Fact-Finding Missions to the region have revealed the BTC Consortium's much-vaunted "unprecedented" consultation process to be fundamentally inadequate. Legitimate consultation is premised on the existence of freedom of expression, yet all along the pipeline, state repression of dissent is institutionalized. In Azerbaijan, President Aliyev's son, recently and anti-democratically appointed prime minister, has publicly threatened critics of the pipeline on national television.

In Turkey, the pipeline passes through predominantly Kurdish regions which have been subject to decades of state violence; the fact that the most recent Mission to Turkey was itself detained twice indicates that the situation on the ground has not improved.¹⁵ Yet the 11,000 pages

of the consortium's Environmental and Social Impact Assessment and other project documents makes no mention of the human rights situation of the Kurds, and the IFC repeatedly refuses to apply its safeguard policy on ethnic minorities despite its obvious applicability.¹⁶ Consent cannot be given when the right to say no is denied; by portraying a top-down state imposition as a process of "stakeholder engagement," the BTC Consortium is actively retarding democratization, not furthering it.



*Fishermen in the village of Yamurtalik
Photo: Greg Muttitt / PLATFORM*

Turkey accedes to the EU within the next half-century, and EU standards go into effect, thus raising environmental requirements and adversely affecting the project's "economic equilibrium" (better known as profit margins). Only the BTC Consortium partners have the power to terminate the HGA, not the host governments, except in extraordinary circumstances.

"In essence, a strip of Turkey a thousand kilometers long is transferred to the jurisdiction of BP and

other oil companies," concludes an attorney who has participated in fact-finding missions (FFMs) to the region.¹⁹ The host governments are only permitted to intervene in the BTC project in the event of an "imminent, material threat"²⁰ which is nowhere defined. In the Turkish HGA, for example, the BTC Consortium is indemnified against both construction cost overruns in Turkey and potential legal liability arising from human rights violations committed in the course of pipeline construction or operation, both of which are to be borne by the Turkish state.

The HGA also denies affected people effective redress in the event of disputes or claims for damages: complaints "shall not be subject to the condition of exhaustion of local remedies"²¹ but will be taken to commercial arbitration in Geneva under UK law. This HGA Article, present in all the HGAs, violates state treaty obligations under Article 2 of the International Covenant on Civil and Political Rights (ICCPR), which requires States to ensure all citizens have an effective remedy under the legal system of the State, without distinction of any kind (presumably whether they happen to live within the project area or not). The ICCPR has been ratified by Azerbaijan (1992), Georgia (1994), and Great Britain (1976). Turkey has not ratified the ICCPR, but has ratified the International Convention on the Elimination of All Forms of Racial Discrimination – CERD (2002), which states that "States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions," (Article 6).

Violations of Host Country Law and Treaty Obligations

Host Government Agreements Undermine National Sovereignty

Undoubtedly the greatest long-term concerns revolve around the legal contracts for the pipeline, particularly the Host Government Agreements (HGAs) signed between each of the three states and the BTC Consortium. In many respects, the HGAs closely resemble the rejected Multilateral Agreement on Investment now being resuscitated by the WTO.¹⁷ The HGAs exempt the Consortium from any obligations under national law: they have the same legal standing as international treaties ratified into domestic law (i.e. they take precedence over purely domestic law, and indeed in this case, other international treaties) and prevail "over all Turkish law (other than the Constitution)."¹⁸ Thus the host governments have effectively abrogated their executive and legislative powers to protect their citizens from potential environmental damage and associated health and safety hazards.

The HGAs also grant the BTC Consortium the power to refuse to implement any new environmental, social or any other laws affecting the pipeline that the affected countries may introduce in the next 40-60 years, the lifetime of the Agreements. In addition, the host governments have promised to compensate the BTC Consortium if new taxes or laws are enacted. This would happen, for example, if

Essentially, the BTC Consortium is assuming many of the rights of a sovereign state, yet at the same time it is both refusing to accept the responsibilities that come with those rights and preventing existing states from fulfilling their own responsibilities. Moreover, it is establishing a legal framework that places both the company and the project outside the regulatory powers of both national state law and international law and conventions, creating a corporate “mezzanine state” that nestles comfortably under the shelter of existing institutions yet is not bound by any of their duties or obligations.

To do this under the rubric of sustainable development and democratization that BP touts so effusively, and not merely in relation to the BTC project, is both loathsome and spectacularly cynical; BP engages with the imperatives of sustainability and corporate reform just far enough to create sufficient political space to subvert those imperatives yet further.

Moreover, according to a legal opinion from eminent barrister Philip Moser, it is also potentially illegal. Moser concludes that the HGAs “amount to a clear potential breach of what would be Turkey’s EU law obligations, namely accepting the supremacy of Community Law,”²² and thus violate EU environmental and human rights law, as well as Turkey’s EU Accession Partnership. On the basis of this opinion, the Baku-Ceyhan Campaign and affected people in Turkey submitted a detailed legal petition to the European Commission requesting that the EC take action to prevent this flagrant move away from Turkey’s obligations under the *acquis communitaires*, with the prospect of legal action to follow if necessary.

OECD Common Approaches Revision 6

This project is currently being considered by up to seven ECAs, despite clear evidence that the project has failed and will likely continue to fail to meet environmental review standards set out under the OECD’s Draft Recommendation on Common Approaches on Environment and Officially Supported Export Credits: Revision 6 of December 2001 (“Common Approaches, Rev 6”). The project EIA is woefully inadequate, it ignores obvious environmental concerns and fails to provide adequate mitigation for known issues such as archeological sites and potential oil spills in protected areas. A full critique details the inadequate time spent in preparation and lacunae in materials.²³ Well-documented human

rights abuses by security forces hired by the BTC Consortium are not even addressed; indeed the entire human rights situation of the region, notably for Kurds, women and other vulnerable groups, is crassly omitted from overall project calculations. Economic displacement without adequate compensation has been documented in all three countries. Worse, the Host Government Agreements are a blatant violation of international treaty obligations, effectively overriding host country law so that project proponents can carry out any and all of their activities unencumbered by environmental, social or financial regulations.

This is precisely the kind of project that should not receive government-backed funding, and that under the OECD guidelines should not be approved. This is particularly the case given that a formal complaint against the BTC project was made under the OECD Guidelines on Multi-National Enterprises on April 29, 2003, to which the response thus far has been obfuscation and evasion. Yet it appears likely that many of the IFIs and ECAs will indeed, for political reasons, get behind BTC. What better evidence that the current Common Approach guidelines are inadequate and must be made mandatory, apply to all OECD member states, include fundamental human rights screening, and public disclosure requirements? Projects such as the BTC pipeline should not be permitted to go forward simply because it is in the interest of the project proponents and their political allies.

Conclusion

If the BTC project were not socially and environmentally egregious enough of its own accord, the project sponsors and their advocates explicitly note that its Host Government Agreements are intended to serve as “a model for extractive industries in developing economies.”²⁴ It would seem that the next generation of MAI offspring share the hubris of the original.

The massive political impetus behind the project makes it hard to stop outright, particularly since BP has claimed the project will be constructed even if the IFIs decline to fund it and have illegally pushed ahead with construction, begging the question of why the IFIs should continue involvement. But significant improvements could still be realized for the human rights and environmental violations, if the ECAs and other IFIs involved in financing the project apply the social and environmental screens required. Additionally, the ‘model’ for future projects that the HGAs represents must be

both brought out into the open and discredited with utmost urgency. Already, international NGO pressure has resulted in a six-month delay to the project and opened it up to much wider scrutiny.

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Endnotes:

¹ The BTC Company is led by BP, which, with a 30.1 per cent share, would be also the operator of the project as a whole. Other shareholders in the BTC Company are the State Oil Company of the Azerbaijan Republic (SOCAR), Unocal, Statoil, Turkish Petroleum (TPAO), ENI, TotalFinaElf, Itochu, Inpex, ConocoPhillips and Delta Hess.

² IFC, AZERBAIJAN, GEORGIA AND TURKEY: BTC Pipeline Project Brief, undated

³ BTC Inter-Governmental Agreement, Article II (8). After pressure from NGOs, BTC Co. has made many of the project documents publicly available—they can be accessed at www.caspiandevlopmentandexport.com

⁴ Corzine, R., "Wisdom of Baku pipeline queried", *Financial Times*, 4 November 1998, p.4.

⁵ For a detailed history of the politics behind the creation of BTC, see *Some Common Concerns: Imagining BP's Azerbaijan-Georgia-Turkey Pipelines System*, PLATFORM, London 2002. It is noteworthy that for many years the major oil companies were unwilling to take on the BTC project due to its massive technical and financial as well as political complexity, and it was only following BP's increased vulnerability to US political pressure after its takeover of Amoco in 1998 that the company took a real interest in BTC.

⁶ SACE, *Environmental News*, 26 March 2003, www.isce.it

⁷ See: List of Major Pending Transactions requiring an Environmental Assessment, Project No AP078161XX, posted 13 June 2002, www.exim.gov

⁸ EBRD, "Ten Questions on the BTC Pipeline", July 17 2003, p.1

⁹ Baku-Ceyhan Campaign FFM Interview with ENVY Consultancy, Ankara, Turkey, March 18 2003

¹⁰ See www.baku.org.uk for forthcoming FFM report

¹¹ Natalya Anteleva. "NPR : Azerbaijan Pipeline Project Prompts Opposition", *National Public Radio*, USA, July 29, 2003, <http://discover.npr.org/features/feature.jhtml?wflid=1360453>

¹² For more on the history of the Turkish state's displacement policy as a solution to its 'Kurdish problem', see KHRP, *This is the Only Valley Where We*

Live: The Impact of the Munzur Dams, June 2003, Section II, available from www.khrp.org

¹³ HGA Turkey, Article 12.1

¹⁴ In Georgia, underlining BTC's political significance, the US has donated \$75 million to fund 400 "anti-terrorism" personnel to protect the project.

¹⁵ Baku-Ceyhan Campaign, Second FFM to Baku-Tbilisi-Ceyhan Pipeline, Turkey Section, May 2003, available at www.baku.org.uk

¹⁶ See *Ibid.*, Chapter 4.1 for the reasons why the Kurds need this basic level of protection.

¹⁷ See Box, "MAI by the Backdoor?", First Fact-Finding Mission Report, Baku-Tbilisi-Ceyhan Pipeline, Turkey Section, August 2002, p.25. This FFM and subsequent visits to the region were undertaken as part of the Baku-Ceyhan Campaign; it and many other materials are available at www.baku.org.uk.

¹⁸ HGA for Turkey, Preamble. After pressure from NGOs, BTC Co. has made many of the project documents publicly available—they can be accessed at www.caspiandevlopmentandexport.com

¹⁹ Miriam Carrion, "HGA Analysis", First Fact-Finding Mission Report, Baku-Tbilisi-Ceyhan Pipeline, Turkey Section, August 2002.

²⁰ HGA Turkey, Article 5.2 (iii)

²¹ HGA Turkey, Article 18.1

²² Counsel's Opinion of Philip Moser, submitted to the European Commission July 4 2003

²³ See www.baku.org.uk.

²⁴ Caspian Development Advisory Group, meeting with Baku-Ceyhan Campaign, June 13 2003

Brazil – Aracruz Cellulose Factory C & Plantations

Project Summary

Inaugurated on August 2, 2002, Aracruz Cellulose's new wood pulp Factory C in Espírito Santo, Brazil adds to the impacts already generated by its eucalyptus plantations and first two factories, which opened in 1978 and 1991. The massive mono-culture eucalyptus plantations needed to feed the largest short-fiber pulp factory in the world are leaving a legacy of rural landlessness, contaminated rivers, destruction of the native Mata Atlântica forest and indigenous rights violations. The conversion of vast tracks of prime agricultural land significantly erodes rural employment and incomes, depletes state and local revenues, undermines Brazil's land reform and zero-hunger campaigns, and generates a tinderbox of rural conflicts waiting to explode. Failure to include the plantations in the environmental review is a violation of Brazilian law, to which the ECAs involved are complicit.

Project Description

Located in the municipality of Aracruz in the southeastern Brazilian state of Espírito Santo, Aracruz Cellulose's Factory C increases the company's yearly bleached cellulose production from 1.24 to 1.94 million tons, thus strengthening its position as the world's largest producer of this type of wood pulp.¹ In order for the company to meet its new production goals, it needs enormous amounts short-fiber eucalyptus and water.

Human Rights and Environmental Issues:

- Increase in landlessness and rural poverty caused by plantation expansion
- Injured and mamed workers' claims suppressed
- Displaced indigenous peoples' claims ignored
- Dioxin exposure at pulp plant

Population and Sensitive Areas Affected:

- Tupinikim and Guarani indigenous peoples; Afro-Brazilian 'quilombo' communities
- Rural agricultural workers with and without land

ECA's Involved:

- Finnvera (Finland)
- BNDES (Brazil)

Status:

Complete – Inaugurated August, 2002

It is estimated that Factory C consumes nearly 2,660,000 m³ of wood per year and increases the company's water consumption from 1.54 to 2.224 m³ per second, enough to supply a city of approximately 2.5 million.² The voracious demand

for wood and water of the world's largest cellulose factory requires between 72 and 130 thousand hectares of prime agricultural land to be converted to monoculture eucalyptus plantations, and the diversion of water from the Doce River. Meeting these needs has come at the expense of the Factory's immediate neighbors and rural agricultural workers, who are being pushed off their lands and into poverty to make way for the new plantations.



Areas of Aracruz Operations & Plantations
Graphic: Aracruz Cellulose

ECA Support

The Finnish Export Credit Agency Finnvera supported the delivery of the Finnish pulp equipment to Aracruz Celulose with US\$ 11 million.³ Due to the lack of public disclosure requirements for ECA support, citizens of Brazil and Finland are unable to access even the most basic information about the publicly-backed finance for this project, and it is not known what other ECAs may have been involved in this project.

Investments total approximately US\$ 825 million: US\$ 575 million for the industrial complex, US\$ 220 million for the increase in plantations, and US\$ 30 million to be used for infra-structure, logistics, and other uses. Most financing has come from BNDES and commercial banks, likely in Brazil. The package appears to have been completed around June of 2001.⁴

Finnish groups seeking to gain information about environmental review for this publicly-based support for the Aracruz project were refused access. They were forced to appeal to the Helsinki Administrative Court. On June 25, 2003, the Court ruled that Finnvera must reply to the groups' requests and explain in detail why they will not disclose the information and what part of the environmental reports are secret. The groups are still waiting for their answer.



Eucalyptus Mono-Culture

Impacts

Environmental Impacts

Increase in monoculture plantations: "a dead forest that kills everything"

The company's monoculture plantations are concentrated along the central-northern part of the Espírito Santo coast and in the extreme south of the neighboring state of Bahia, and are now encroaching westward into the interior of Espírito Santo state, northward into southernmost part of Bahia, and southward into the state of Rio de Janeiro.

Although Aracruz alleged the project did not generate any new eucalyptus plantations in the environmental impact report used in the licensing process, it has since confirmed the need for 72 thousand new hectares of plantations,⁵ and

independent sources place it closer to 130 thousand.⁶

These monoculture eucalyptus plantations have historically replaced native Mata Atlântica forest and are now displacing fertile agricultural land. While the Mata Atlântica forest is now protected, the plantations created through Aracruz's current expansion project generate direct environmental impacts at the local and regional level. The affected farmers point to clear-cutting (which includes not only removing all existing vegetation, but also houses and any other structures); the application of herbicides and pesticides, which have contaminated the rivers and streams; taking fertile flat lands out of food production and the contamination of adjacent organic farming enterprises.⁷

The Coordinating Committee of the state Small Farmers' Movement (MPA) registered a complaint with the authorities on February 20, 2003 over the contamination of the rivers and streams in eucalyptus plantation areas with roundup (glyphosate), tordon (picloran) and 2,4 D, in addition to a product referred to as 'amarelão' (big yellow), which is probably a fungicide. A formicide (mirex-S) and an insecticide (scout) are also used. In April of 2002, agricultural worker Aurino dos Santos Filho, aged 34, died in the field while applying pesticides. After the complaint was lodged by the MPA, the Federal Public Ministry in Espírito Santo opened an inquiry on the excessive use of pesticides by Aracruz Celulose.⁸

Through the Second Forest Incentives Program,⁹ the company has even supplied pesticides and herbicides to farmers, along with eucalyptus seedlings, thus encouraging the growers to continue using and exposing themselves to toxic chemicals.

Concerns over dioxin contamination

While the company began to invest in cleaning up emissions from its plant in the 1990's as a result of widespread criticism domestically and internationally, cellulose production is still extremely polluting. In addition to the generation of organic compounds as measured by the Biologic Oxygen Demand (BOD5) and the Chemical Oxygen Demand (COD), and of atmospheric and solid emissions, one of the most serious problems is the use of chlorine in the Standard – STD – production process. The use of

this substance generates more than 200 organochlorates, including dioxin.

The hazards associated with organochlorate compounds that form during the older Kraft process, used at all three of Aracruz's plants, led to the development of two alternative technologies: ECF (elemental chlorine free), and TCF (total chlorine free). TCF cellulose is preferred by European markets, while the American paper industry supports the use of ECF, even though it still results in the formation of organochlorates, while TCF completely eliminates it. Even the World Bank, in its Pollution Prevention and Abatement Handbook, calls for the use of TCF.¹⁰ Aracruz opted for ECF as its production technology for Factory C,¹¹ so it is still using chlorine, and will continue to generate organichlorates such as dioxin.

Massive water consumption – for free and with state subsidies

With Factory C, this consumption has risen from 154,000 to 248,000 cubic meters per day.¹² This level of consumption is equivalent to that of a city with a population of 2.5 million with a per capita consumption of 100 liters per day. Since 1978, Aracruz has ***never paid*** for the water it consumes.

With its plans to construct Factory C, by 1999 Aracruz already anticipated that the currently available water resources would be insufficient once its new unit began functioning. This led the company to develop a new plan for diverting water from the Doce River basin via a canal. However, while Aracruz Cellulose is the primary beneficiary of this project, it was the Municipality of Aracruz that proposed, licensed, and constructed the Canal. Meanwhile, the nearby community of Barra de Riacho currently faces serious water shortages and their local waterways are contaminated. Fishing, the main source of income for the community's residents, has been seriously affected by the diversion of waters by Aracruz.¹³ According to attorney Sebastião Ribeiro Filho, the canal project is in blatant violation of legal principles including insufficient environmental review, inadequate public consultation, and licensing irregularities.¹⁴

A public interest law suit is currently pending on this issue.

Human Rights Impacts

Indigenous lands occupied

Ancestral home to the Tupinikim and Guaraní peoples, the Mata Atlântica has more than 240 different species of trees, and possesses many other attributes that have been integral to the cultural identity of local indigenous and Afro-Brazilian populations. These peoples' way of life, which revolved around using the forest, was destroyed by deforestation initiated by Aracruz Celulose during the 1960s and 1970s in making way for its eucalyptus plantations. Perhaps the problem is most eloquently expressed in the words of a Tupinikim leader, who defined a eucalyptus plantation as "*a dead forest that kills*

everything." The Tupinikim and Guaraní have been able to reclaim 7,500 hectares from Aracruz after a long and difficult struggle. An additional 11,500 hectares of their ancestral land remains occupied by Aracruz, primarily due to the company's successful lobbying efforts with the state.

The relationship between Aracruz and the indigenous and Afro-Brazilian communities is marked by conflict and fear, decades after they were expelled from their lands. Afro-Brazilian communities in the north of Espírito Santo state have set fire to plantations in frustration over land and resource claims and the Tupinikim and Guaraní indigenous people have cut down parts of plantations in their efforts to demarcate their ancestral lands. For its part, Aracruz has hired a security force to "protect" the plantations. This is not the "good neighbor" image presented by Aracruz publicity.

Destroying rural livelihoods and endangering worker health

Aracruz's purchase of agricultural lands and its Forest Incentives Program have dramatically increased rural landlessness. When landowners who had sharecroppers on their lands sell their lands to Aracruz or convert it to eucalyptus plantations, this begins a tragic drama of families being forced to leave their lands and homes. In



Native Mata Atlântica forest destroyed by Eucalyptus mono-culture plantation expansion in the 60s and 70s

2001, for example, when Aracruz purchased of nearly 5,000 hectares in the municipality of Vila Valério, more than 100 families have been expelled and many others lost temporary jobs.¹⁵ In Jaguaré, also in the north of Espírito Santo, 14 sharecropper families were expelled from Fazenda Barba Negra, where they had been coffee farmers. Approximately 700 workers employed by a papaya plantation lost their jobs when the land was bought by Aracruz.¹⁶ There are still no exact figures on the number of people who were expelled and day laborers who lost their jobs as a result of Aracruz's land purchases, though unofficial tallies are that at least 10 thousand people have been displaced in Espírito Santo where 200 thousand hectares have been converted to plantations. In Bahia state, 300 thousand hectares have been converted, and in Minas Gerais, an astounding two million hectares have been converted.

The benefits to Brazil in terms of the employment generated by the Aracruz project are extremely limited. Factory C generated a total of 113 direct jobs and 60 indirect jobs.¹⁷ More significantly, eucalyptus plantations compare poorly with the agricultural activities they displace. According to a 2002 study by INCAPER, the Espírito Santo state rural research and extension organization, one hectare of land utilized for raising fruits, vegetables, and grains generates an income of US\$4,200 per year. By contrast, one hectare of eucalyptus plantation generates only US\$138 per year. The study examined the costs and prices of 24 agricultural products, compared to eucalyptus.¹⁸

In a 1999 study commissioned by the Lutheran Seeds Foundation, eucalyptus plantations were shown to provide an income of US\$225 per hectare per year, as opposed to guava, which can generate US\$10,500 per hectare. According to this study, planting coffee, coconuts, bananas, limes, and mangoes all generate 9 to 20 times more income than eucalyptus for rural producers.¹⁹ In addition, fruit growing generates ten direct jobs per hectare, while the Aracruz Celulose model, taking into account the land area utilized by the company and the number of direct and indirect jobs, generates just one job for every 44 hectares. This is without taking into consideration the hundreds of families displaced from their lands after the land was acquired by the company.²⁰



Aerial view of Aracruz Factory C

Plantation Expansion Generates Rural Conflict, Derails National Land Reform Program

According to data from the Landless Workers' Movement (MST, by its Portuguese acronym), there are nearly 65,000 families in Espírito Santo who are waiting for plots of land. Aracruz's preference for purchasing flat, fertile land in parcels of more than 100 hectares has pitted the company against the federal land reform agency in a competition for lands that could have been used for land reform. The company has often paid two or three times the market value. The National Institute for Settlement and Land Reform (INCRA), the federal agency responsible for land reform, has a much smaller budget for land purchases and cannot compete with Aracruz's deep pockets. For obvious reasons, potential sellers prefer to sell their lands to Aracruz.

In frustration, the MST of Espírito Santo occupied the Fazenda Barba Negra in Jaguaré in September of 2001, protesting against the purchase of lands by Aracruz and against the negative impact of this on land reform. The occupying families were expelled some weeks later, under a state court repossession order, decided in Aracruz's favor. Clearly, landless rural agricultural workers are no match for Aracruz's legal department.

The failure of the courts and government agencies to resolve the problem of rural landlessness, exacerbated by Aracruz's massive plantation expansion, is leading to heightened rural tensions and a volatile environment.

Labor Rights Violations and Lawsuits

Rural labor rights are also eroded by Aracruz's agro-industrial production model. The company's current policies are leading to the dualization between the "categories" of workers. Direct employees of Aracruz, totaling 1,542 in 2001, have higher salaries than the regional average, their jobs are secure, and they enjoy a variety of employment-related services and benefits. But those who are employed through outsourcing and subcontracting, totaling 3,037 in 2001, including former plantation workers who have been re-subcontracted, receive lower salaries, have worse working conditions, and enjoy few employment-related services and benefits. Outsourcing is thus synonymous with erosion of worker rights.

Aracruz Celulose has been named in more than a thousand labor-related lawsuits, approximately 180 of which are on behalf of former plantation workers whose health has been damaged by the use of pesticides or who have lost arms, legs, hands and fingers in chainsaw accidents.²¹ Many of these accidents were never registered by Aracruz and ailing workers have been dismissed when the company caught wind of their condition.

Financial Viability Issues

Tax holidays deplete state resources

The increase in eucalyptus plantations has had indirect costs for the entire population of the state of Espírito Santo and the other states where it has plantations. As a business involved in exporting its products, Aracruz Cellulose is exempt from sales taxes. What's more, the company is even granted tax credits for the sales taxes it pays on supplies and raw materials used in the production process. Because of such corporate subsidies, by the end of the year 2000, Aracruz had accumulated US\$28 million in tax credits.²² Today, the state of Espírito Santo actually owes more than US\$35 million to Aracruz, and is in no position to pay off this "debt."

The conversion of agricultural land to eucalyptus plantations dramatically reduces local and state revenues and likewise the resources available for investing in health care, education, and other basic social services. This is especially problematic for the local tax revenues of the municipalities where the plantations are located. The 25,000 hectares utilized for family agriculture in the municipality of São Mateus for example, generate an annual income of US\$35 million and employ between 15,000 and 20,000 people. But the 50,000 hectares that are dedicated to eucalyptus monoculture generate an annual income of only US\$7 million, and the total number of direct and indirect jobs generated is only 3,000.²³



Demonstrators with banner reading "Aracruz Celulose: environmental permit in 28 days – environmental fairy tale"
Photo: Red Contra o Deserto Verde 2002

Disclosure and public consultation

It has been extremely difficult for citizens affected by Factory C and the new plantations expansion to gain access to information about the credit contracts for the imports, valued in the millions. Similarly, the decision-making processes that accompanied the licensing and approval process has been flawed, excluding the vast majority of project-affected peoples.

By Brazilian environmental law, the population directly affected by any project is entitled to have access to the EIA/EIR required under state law for licensing. This participation was illegally restricted in the case of the proposal for Aracruz Celulose's Factory C due to Aracruz's misrepresentation of the scope of the project. The Espírito Santo State Department of Environmental Affairs (SEAMA), responsible for the licensing process, was negligent throughout the entire process, ignoring clear evidence of impacts

directly related to the third factory and the new plantations.

The project's EIA/EIR incorrectly limits the area of influence and scope of the study to the actions and emissions of the factory itself, alleging that "the project being proposed will not bring about any sort of increase in the

area of Aracruz Celulose's eucalyptus forests in the state of *Espírito Santo*..."²⁴ This is clearly not the case, as confirmed by Aracruz's own 2001 Annual Report, the BNDES press releases related to project funding and other independent sources.²⁵ This violates Brazil's environmental assessment laws.

As a direct consequence of this omission, only one public hearing on the EIA/RIMA was held, in the municipality of Aracruz, on February 14, 2000. Questions on broader issues, specifically whether Aracruz Cellulose planned to increase its plantations in Espírito Santo were rebuffed by representatives of the company, the State department of Environmental Affairs (SEAMA) and Aracruz's consultant, CEPEMAR. All of these alleged, as did the EIA/EIR itself, that there would be no increase in the area of eucalyptus plantations in Espírito Santo.

The indigenous communities and fishermen, who are the industrial complex's nearest neighbors, had not even been invited to the hearing, which constituted their only opportunity to voice an opinion over the company's plans to construct an additional cellulose factory in their backyard. The project in question was not a small one with minimal impacts, but the largest complex of its type in the world.

Violations of Host Country Law

The highly suspect environmental review and licensing processes for Aracruz Cellulose's Factory C and associated plantations have placed it under suspicion by the Espírito Santo state Legislative Assembly. Questioning the legality of the Factory C operating license, the Assembly initiated a Parliamentary Investigative Commission (CPI) in March, 2002. The CPI was charged with investigating irregularities in the licensing of Aracruz Celulose's Factory C.²⁶ Until Aracruz succeeded in blocking further proceedings, the CPI served as a forum for bringing to public attention the innumerable impacts caused by Aracruz's activities throughout its 35-year history in the state of Espírito Santo.

Environmental attorney Sebastião Ribeiro brought a Public Action in Espírito Santo state court against Aracruz Celulose and the Institute for Agrarian and Forest Defense (IDAF), the agency that granted the 30,000 hectare Forest Incentives II Program license to Aracruz. On August 9, 2002, the Office of Public Registry ruled that the Forest Incentives II Program was illegal, since the IDAF had not requested an EIA/EIR, as required by law. IDAF's own attorney testified on June 18, 2002 during the Parliamentary Investigative Commission (CPI) on Aracruz Celulose license irregularities that there had been no legal assessment of Aracruz's forest licensing or any other activities, and as such, all licenses that had been given to the company should be considered illegal.²⁷ Aracruz has since managed to temporarily overrule the judicial order, and the case is currently on appeal.

OECD Common Approaches Rev 6

The Aracruz Cellulose Factory C and its associated eucalyptus plantations have brought significant, long-term adverse impacts to Brazil, and no effort has been made to mitigate them. This project should not have received official support from Finnvera. Had it been properly reviewed properly under the OECD Draft Recommendation

on Common Approaches on Environment and Officially Supported Export Credit: Revision 6 of December 2001, or Finnvera's own environmental guidelines, which with into effect in early 2001, it would have been rejected on a number of grounds:

- It fails to take full cumulative project impacts into account, especially impact of eucalyptus plantations, on rural livelihoods, municipal and state revenues, the environment, and worker health, in violation of host country environmental review laws.
- The consultation process was deeply flawed, excluding neighboring communities, rural workers and indigenous people directly affected by the project,
- Eucalyptus plantation expansion, driven by the project, has led to the violation of host country laws and has undermined regional development plans.
- Water required by Factory C has been delivered free of charge, paid for in full by the local municipality, and in violation of host country environmental review laws.

Conclusion

The Aracruz Cellolose project is characterized by the large-scale rural economic dislocations and increased landlessness, contamination of drinking water, workers' rights violation, and the complete disregard for claims by indigenous people and Afro-Brazilians displaced by its eucalyptus plantations. At the same time, the economic benefits to Brazil are questionable at best. The project's impacts have been ignored by the project proponents, banks and international financial institutions supporting the project. The risks to project sponsors of wide-spread protests, continuous legal challenges and reputational harm caused by failing to fully assess and mitigate environmental and social impacts are clear. The Aracruz story makes a strong case for the need for more rigorous environmental and social screening, full ex-ante public disclosure, and post-approval monitoring and accountability compliance mechanisms.

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- ⁹ This program involves eucalyptus-planting contracts with farmers that stipulate they plant, on their own lands, a certain quantity of hectares of eucalyptus, using seedlings, pesticides and herbicides provided by the company. At harvest, the farmers sell the wood to Aracruz at a set price.
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- ²¹ As of yet there is no precise data on the number of workers laid off, disabled from on-the-job accidents, and court cases filed against the company. Currently, FASE-

ES is investigating this situation in preparation for registering an international complaint.

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- ²³ Proceedings of the public hearing on agro-ecological zoning, São Mateo, Espírito Santo. March 5, 2002
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- ²⁵ BNDES, 2002; CEPEDES, 2003; SEAMA, 2000; *Jornal do Brasil*, January 6, 2002.
- ²⁶ Gomes, Helder. “Relatório sobre Aracruz em função da CPI da Aracruz Celulose na Assembléia Legislativa.” (“Report on Aracruz because of the CPI of Aracruz Celulose in the Espírito Santo Parliament”). Vitória, 2002.
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China - Three Gorges Dam

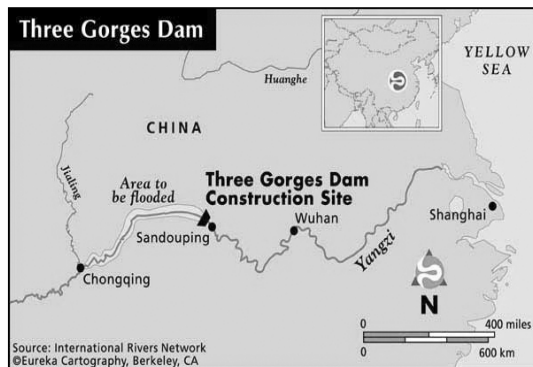
Project Summary

In December 1994, work began on the world's largest and most controversial hydroelectric facility, the Three Gorges Dam (3GD) in China, that will provide up to 18,200 megawatts of electricity. To be completed in 2009, the reservoir will stretch 600 kilometers upstream, submerge over 20,000 hectares of farmland, 19 cities, 140 towns, and 1,300 archeological sites, and displace between 1.2 and 1.9 million people.¹ For those directly affected by submergence, forced resettlement, sorely inadequate compensation, widespread human rights abuses and flagrant corruption have been persistent problems.

Together with the Chinese government, a 26-bank consortium and eight export credit agencies (ECAs) helped finance the dam. With the announcement in June 2003 of a second round of bidding for turbines and generator sets, many of the former financiers and ECAs may be called on again to provide capital and trade finance.

Project Description

3GD is being constructed on the Yangtze River at the town of Sandouping, Hubei province in south central China. Once completed, the 186 meters



Three Gorges Dam Project
Map: International Rivers Network

Human Rights and Environmental Issues:

- Forced displacement of more than 1.2 million people with inadequate compensation
- Loss of farm land, factory employment, and livelihoods
- Police brutality against peaceful protests and petitions to highlight corruption and inadequate compensation
- State censorship of project criticism
- Increased health risks due to water borne diseases and submerged mines and factories
- Increased greenhouse gas emissions

Population and sensitive areas affected:

- More than 640,000 people already displaced; between 1.2 and 1.9 to be displaced overall
- 20 million people upstream, and 300 million downstream to lose livelihoods due to the dam
- 25,000 hectares of productive farmland and 1,300 cultural and archaeological sites to be submerged

ECA's involved and amount:

Over US\$1.5 billion from ECAs (figures in US millions, where available)

- BNDES (Brazil - \$202 loans)
- EDC (Canada - CDN\$189 loans)
- COFACE (France)
- GIEK (Norway)
- KfW (Germany - \$271 loan, \$53 guarantee)
- Hermes (Germany - \$40 guarantee, \$80 loan)
- JEXIM (Japan - \$120 loan, \$40 guarantee)
- ERG (Switzerland - \$253 guarantee)
- SEK (Sweden - \$351 loan)

Status:

Repayments on the initial 1995-1999 financing are ongoing. Project sponsor CTGPC announced a second round of bidding for generators and turbines on June 10, 2003. The project is scheduled to be completed in 2009.

high, 2,300 meters-wide dam will submerge over 1,000 square kilometers of land and river basin settlements upstream. Operating at full capacity, the dam's twenty-six turbines will provide a combined capacity of up to 18,200 megawatts. However, financiers warn that there is little market for the expensive hydropower and that the state will have to subsidize much of the costs. In addition to generating electricity, the dam's stated benefits are to prevent flooding and increase navigation of ocean going ships further upstream to Chongqing harbor.²

The project is conservatively estimated to cost US\$25 billion (180 billion yuan)³, although estimates range as high as US\$77 billion.⁴ The project proponent is the China Three Gorges Project Corporation (CTGPC). It has raised money for the project by issuing bonds (10-12%), through state power tariffs collected from the downstream Gezhouba Dam and the Three Gorges Construction Fund (60%), and from various Chinese construction, development and commercial banks (20%). The remainder has been covered through loans from a large consortium of corporate investment banks and trade financing from eight export credit agencies (ECAs) (8-10%).⁵ In March 2002, the China Yangtze Power Corporation was formed to raise further money on the stock market through a public offering of shares.

The feasibility study for the dam began in 1985. The Chinese National Congress Assembly approved the project in April 1992, and construction began in 1994. The first stage of reservoir filling began in April 2003 and reached the current height of 135 meters by mid-June. The final reservoir level will be 185 meters.

Shortly after the completion of the first stage of filling, the CTGPC opened a second round of international bidding for four more turbine and generator sets.⁶



Smoke and dust rise after demolition efforts begin in the town of Guizhou in Central China's Hubei Province to make way for the Three Gorges Dam Project.

Photo: China NewsPhoto 2002

ECA Support

Between 1995 and 1999, eight ECAs financed the sale of turbine generators, cement plants, and electrical transformer and converter equipment for the project.⁷ To produce all the necessary equipment, Brazilian, French, Swiss and Norwegian companies formed an international consortium, as did Canadian, German and Brazilian companies. Their respective ECAs approved more than US\$1.5 billion in trade finance for the deals.⁸

Canada's Export Development Corporation (EDC) was the first ECA to support the project, providing a total of CDN\$189 million in loans and export credits for a cement plant in 1994, and a project-management system in 1995. In 1997, it provided financing for the sale of turbine-generator units.

German ECAs Kreditanstalt für Wiederaufbau (KfW) and Hermes Kreditversicherungs AG (Hermes), together with German banks, complemented this package with a US\$271-million loan and US\$40 million credit guarantee respectively. This German partnership was repeated in 1999, when KfW provided an \$80 million loan for the purchase of transformer equipment, and Hermes provided an export credit guarantee of US\$52.9 million.

In 1997, Brazil's Banco Nacional de

Desenvolvimento Economico e Social (BNDES) provided a US\$202 million loan for eight turbine-generator sets. Norway's ECA, Garanti-Instituttet for Eksportkreditt (GIEK), provided the largest guarantee to date for the deal, while the Swiss ECA, Exportrisikogarantie (ERG), provided US\$143.1 million in guarantees. In 1999, ERG provided an export credit guarantee for US\$112 million in high voltage switchgear equipment.

Although no Japanese firms were initially successful in winning contracts, in 1999, the former Japan Export Import Bank (JEXIM), now called Japan Bank for International Cooperation (JBIC), provided Japanese companies with a US\$160 million loan for a transformer and

Geographic Information System analysis of the construction site. The Swedish ECA, Svensk Export Kredit (SEK), provided a US\$351 loan in 1999 for two converter stations.

The World Bank Group and the US ECA, the Export-Import Bank, were noticeably absent from providing any support, citing environmental and economic reasons.⁹

Impacts

Environmental Impacts

Unprecedented changes in river hydrology will impede fish and river mammal migration, threatening the existence of the endangered Baiji Yangtze River dolphin. Sediment and nutrients trapped by the dam will fail to reach floodplains downstream, thereby starving wetland areas and possibly changing migratory bird habitats.

Over 17,000 hectares of arable land and 7,000 hectares of orchards will be submerged by the dam's reservoir, eliminating the livelihoods of tens of thousands of farmers.¹⁰

The submergence of vast areas of farmland will generate methane gases, a leading contributor to global warming. Submerged coal and phosphorus mines are expected to leach poisonous chemicals into the reservoir,¹¹ and mercury in the sediment, soil and vegetation will leach into the reservoir waters after submergence.¹² The further release of heavy metals, chemical pesticides, and fertilizers in reservoir bottom is also expected.¹³

Project proponents claim the project is a necessary flood control structure. Theory and practice suggest the opposite. By confining the river, the dam may increase both the volume and speed of the river's waters, enhancing the potential for damage downstream when unavoidable floods occur. In fact, former Premier Zhu Rongji excluded 3GD as a flood management tool for the region, calling instead for the relocation of downstream residents and the protection of upstream watersheds. Furthermore, in 2002, Project President Lu Youmei publicly admitted that 3GD was not the answer to flood woes on the Yangtze. He urged that other flood management measures, such as reforestation and floodplain management, needed immediate implementation.¹⁴

Landslides and seismic activity is likely to

increase in the reservoir zone. 214 landslide areas have been identified, posing a risk to ships and vessels. Earthquakes of up to 6.5 on the Richter scale are expected as a result of dam construction and submergence when the dam is completed in 2009.¹⁵

Human Rights Impacts

The loss of fertile agricultural land upstream and significant soil erosion downstream will undermine food security in a region where agriculture is the primary activity and arable land is already scarce. There is insufficient suitable land for local relocation, and the available land is on sloping mountain sides and of poor quality.¹⁶

Farmers will not be the only sector of the population to lose out. 624 factories, including six major factories in Chongqing, will also be submerged,¹⁷ adding to the country's unemployment rate. The dam will submerge aquaculture facilities, irrigation ponds and rice fields used for raising fish, affecting 3,888 tones of fish production per year.¹⁸ Chinese authorities expect fish production in the reservoir to increase,

however there is no guarantee that the fish will adapt well to the new conditions.

With the world's fourth highest silt-load, the dam will impede the Yangtze from providing important nutrients to the floodplain downstream, a process that ensures the future fertility of farmland. Downstream fishing and aquaculture, wetlands and estuaries, will also be disrupted.¹⁹



Ganjing: Resident workers salvage bricks
Photo: International Rivers Network

Irreplaceable cultural heritage sites will be lost. Over 1,300 archaeological and cultural sites, including temples and ruins dating from the ancient Daxi culture, and tombs from the Warring States period, the Eastern Han, Ming and Qing dynasties, will be submerged.²⁰

Forced displacement and inadequate compensation raise the gravest concerns. A recent resettlement investigation documented the inadequacy of Chinese authorities' measures. Compensation falls far short of replacement cost; land and jobs that had been promised to affected residents are either no longer available or of inferior quality; no independent grievance mechanism exists; and protests about resettlement problems have been

quelled with police violence.²¹ Technical studies and media reports have confirmed these claims, indicating that compensation has for the most part been sorely inadequate, and that income after displacement declined sharply.²²

Pervasive corruption plagues the compensation and resettlement program. Millions of dollars earmarked to compensate displaced families were siphoned off by local bureaucrats. In September 2002, officials acknowledged 234 cases of corruption involving US\$5 million.²³ Funds reportedly went to local officials who allegedly used the funds in real estate schemes, leisure hotels, and stock market speculation.²⁴



Peaceful protests against the 3GD are now interpreted as a crime of “interfering with Three Gorges resettlement.” Several individuals who have attempted to organize villagers and voice their concerns to central government officials have been charged with this crime and sentenced to prison.

Financial Viability Issues

Until the dam is completed in 2009, actual electricity benefits cannot be assessed. The cost per kilowatt-hour, however, is expected to be as high as \$2,000 due to the enormous capital investment and operating costs.²⁵ Sediment build-up in the reservoir is expected to substantially reduce the operational efficiency of the dam.²⁶

Resources allocated to dam construction by the Chinese government are so extensive that other development projects, including flood management have been neglected.²⁷

Violations of Host Country Law and Treaty Obligations

The lack of independent grievance mechanisms and the punishment meted out against peaceful protestors violate China’s own laws. This unfair treatment breaches the country’s commitment to

the principles enshrined in the International Covenant on Civil and Political Rights, which China has signed.

The project’s resettlement, compensation, and rehabilitation measures fail to meet World Bank

standards and deny citizens their livelihoods, in violation of the International Covenant on Economic, Social and Cultural Rights, ratified by China in 2001.

The governments of all ECAs participating in 3GD contracts have ratified the International Covenant on Civil and Political Rights, which enshrines the freedom of expression, peaceful assembly

and association. These rights have been violated by 3GD officials with regards to the resettlement program. The project implementation also lacks informed consent by affected people.

OECD Common Approaches Rev 6



He Kechang and Wen Dingchun with petitions detailing resettlement grievances. In March 2001, the men were captured, charged, and sentenced to four years in prison for “interfering with Three Gorges resettlement.”

Photo: International Rivers Network

The Three Gorges Dam in China is one of today’s most environmentally and socially devastating, and most widely opposed projects. At the time that many of these loans and guarantees were approved, only the US Ex-Im bank had environmental policies in place. To its credit, Ex-

Im rejected the 3GD project on environmental grounds.²⁸ Most of the other ECAs did not begin to take the environment into account until a common set of environmental guidelines had been adopted at the OECD, that is the ‘Common Approaches on Environment and Officially Supported Export Credits,’ or Rev 6. Since Rev 6 was not finalized when financing for 3GD was approved, the ECAs involved have argued that they applied the policies prevailing at the time.²⁹ Nevertheless, it is highly probable that had Rev 6 been in place at the time, many of the same ECAs

would have still been able to support the project under its provisions.

For example, while Rev 6 provides an illustrative list of sensitive sectors that are likely to fall under Category A, it fails to include any exclusion criteria. Such a list might include projects where people are forcibly displaced without adequate compensation, that have involved companies guilty of corruption or bribery, that will likely infringe on people's civil and political rights, or that permanently destroy cultural heritage sites. If the OECD countries are serious about benchmarking, then they should set a minimum standard below which they are not prepared to go.

Rev 6 does not require consideration of broader socio-economic, human rights, or cultural impacts. In the 3GD case, this would include the 1.2 million people resettled in the area, the further 320 million people affected up and down stream, the loss of agricultural land, China's record for human rights abuses, and the loss of over 1,300 cultural sites.

Using benchmarks of good practice does not guarantee that the highest international standards are applied. For example, the Three Gorges Dam breaches the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Aarhus Convention on Public Participation in Environmental Matters, the WCD recommendations, World Bank standards on resettlement and even the OECD's own Guidelines on Multinational Enterprises. Yet under Rev 6, this may not have mattered since it allows members to apply standards that are below international standards. Equally, with the current political climate in China, relying on host country standards would fall short of meeting basic internationally recognized human rights.

Finally, there is no obligation to consider information from public consultations as part of the evaluation and decision-making process. In the

case of 3GD, there was no informed consent and countless alternative positions to the official position have been put forward. However, under Rev 6, project sponsors do not have to take this into account.

Conclusion

The newly-opened round of contract bidding for new turbines and generator sets by the project sponsor offers a unique opportunity for many ECAs to demonstrate the integrity of their environmental policies and decline support on the ample evidence provided here that this project has significant adverse impacts that either cannot be or are not being adequately mitigated. A number of

the ECAs involved have been asked to do just this. An initial response from Canada's EDC, however, paints a gloomy picture. Despite many of the social, environmental, cultural, economic, technical and procedural issues raised above, EDC has said that declining involvement in the Three



*Wushan: View of affected waters
Photo: International Rivers Network*

Gorges Dam project in the future is something it cannot do.³⁰ They did say, however, that they would conduct a review of the relevant issues – environmental, social and human rights – should the circumstance arise.

But with an environmental policy as flexible and vague as Rev 6, there is little confidence that EDC, or any other ECA, will not become involved in 3GD again. In the absence of any such commitment, adoption of the NGO proposal for Common Approaches, Revision 7, by all members would ensure that all OECD export credit agencies would refrain from supporting this project in the future, and it would establish a level playing field so ECAs are not lowering their environmental standards to help their country's companies win valuable contracts.

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Endnotes:

¹ Estimates vary widely between reports of the amount of arable land affected and of people to be resettled. These are conservative estimates.

² Adams, P. and G. Ryder, 'China's great leap backward', *International Journal*, Autumn, 1998.

³ Liao Jun and Zhou Meng Rong 'Multi-channel Fund-raising ensures sufficient construction funding for the Three Gorges project', *Economic Information Daily*, June 17, 2003.

⁴ Adams, P. and G. Ryder, 'China's great leap backward', *International Journal*, Autumn, 1998.

⁵ Liao Jun and Zhou Meng Rong 'Multi-channel Fund-raising ensures sufficient construction funding for the Three Gorges project', *Economic Information Daily*, June 17, 2003.

⁶ Bidding No.: TGT-TGP/EM2003011 available on www.chinabidding.com.cn

⁷ Unless otherwise indicated, the following information comes from 'Who's behind China's Three Gorges Dam' Probe International (www.probeinternational.org, visited 15/7/03)

⁸ *Rights Dammed Off at Three Gorges – An investigation of resettlement and human rights problems in the Three Gorges Dam project*, International Rivers Network, 01/03.

⁹ In 1988, the World Bank stated that the current design of the project was not economically viable. Ex-Im refused to issue a letter of interest due insufficient information to assess the project's consistency with its environmental guidelines. P. McCully, "A Crack in China's Dam Plan," *Multinational Monitor*, July/August 1996.

¹⁰ Statistics vary among authors. The 1988 Feasibility Study published by China's Water Conservancy Press estimated 23,800 hectares of farmland and 4,100 hectares of orchards would be affected. (Dayu Yang, *Three Gorge: Resettlement and marginalization*, University of Leeds Press, January, 2000).

¹¹ Zhu Jianhong, 'The Three Gorges Project: An Enormous Environmental Disaster', in *Yangtze! Yangtze!* Earthscan, 1994.

¹² A. Penn, 'Potential Methyl Mercury Contamination in the Three Gorges Reservoir' in *Yangtze! Yangtze!*, Earthscan, 1994.

¹³ J. Larson, 'Downstream environmental impacts' in *Yangtze! Yangtze!*, Earthscan, 1994.

¹⁴ L. Qinkan, 'Ten Controversial Issues on the Three Gorges Project', in *Yangtze! Yangtze!*, Earthscan, 1994

¹⁵ 'Minor tremors rattle Three Gorges during reservoir filling,' *21st Century Economic Report*, June 26, 2003.

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¹⁸ D. Wegner, 'Three Gorges Reservoir: Environmental Impacts' *Yangtze! Yangtze!*, Earthscan, 1994.

¹⁹ J. Larson, 'Downstream environmental impacts' *Yangtze! Yangtze!*, Earthscan, 1994.

²⁰ Zhu Jianhong, 'The Three Gorges Project: An Enormous Environmental Disaster', *Yangtze! Yangtze!*, Earthscan, 1994.

²¹ "Human Rights Dammed Off at Three Gorges – An investigation of resettlement and human rights problems in the Three Gorges Dam project", International Rivers Network, January 2003.

²² See, for example, 'Three Gorges rural resettlement and its impact on the host population and the environment', Chinese Academy of Science researchers, March 2002; and Geoffrey York, 'Chinese Corruption', *Globe and Mail*, June 4, 2003.

²³ Geoffrey York, 'Chinese Corruption' *Globe and Mail*, June 4, 2003.

²⁴ *Rights Dammed Off at Three Gorges – An investigation of resettlement and human rights problems in the Three Gorges Dam project*, International Rivers Network, January 2003.

²⁵ P. Adams and G. Ryder, 'The Three Gorges Dam: a great leap backward for China's electricity consumers and economy', Probe International, December 1999.

²⁶ Adams and Ryder, 1999.

²⁷ L. Qinkan, 'Ten Controversial Issues on the Three Gorges Project', *Yangtze! Yangtze!*, Earthscan, 1994.

²⁸ P. McCully, "A Crack in China's Dam Plan," *Multinational Monitor*, July/August 1996.

²⁹ See for example the January 17, 2003 letter to and February 5, 2003 response from Export Development Canada regarding its involvement in Three Gorges (www.halifaxinitiative.org).

³⁰ Letter from EDC, July 2, 2003, in response to a letter from the Halifax Initiative and the International Rivers Network (www.halifaxinitiative.org).

India – Tehri Dam

Project Summary

In the Indian Himalayas, at the confluence of the Bhagirathi and the Bhilangana Rivers, the world's fifth highest dam is nearing completion. Ironically, the project is named after the city of Tehri - a once-vibrant regional trading town - which will be submerged along with 107 neighboring villages when the dam's reservoir is filled, displacing up to 100,000 people. Designed in the 1960's, the Tehri dam is located in a highly active earthquake zone. If completed, it will endanger millions living downstream and involves "totally unjustified risks," according to an Environmental Review Committee established by the Indian authorities.

Project Description

With a height of 260 meters and a 45 square kilometer reservoir, the Tehri Dam will displace up to 100,000 people in one of North India's poorest regions. Because of inadequate studies, there are no firm estimates on the number of people living downstream at risk in the event of a dam break, but estimates range from half a million to ten million. The dam and an associated pumped-storage project will have a full generation capacity of 2000 MW, but critics maintain that the hydrological planning data was faulty and estimate that actual power production



*Tehri Dam – Area quarried for dam materials
Photo: Patrick McCully / IRN*

Human Rights, Environmental and Corruption Issues:

- Forced displacement of 67-97,000 people without adequate compensation or resettlement plan
- Six corruption cases pending against project proponents
- Diverting water from poor communities in the Himalayas to New Delhi
- Interrupting the main tributary to the sacred Ganges River
- Catastrophic flood danger due to inadequate design and faulty construction threatens up to 10 million people downstream
- No consultation with project-affected populations
- Multiple environmental reviews recommending cancellation overruled for political reasons

Population and Sensitive Areas Affected:

100,000 displaced and between half a million to 10 million people threatened by dam failure from seismic activity

ECA's Involved:

- Hermes (Germany, \$35 million guarantee)
- KfW (Germany, \$35 million loan)

Status:

Approved by Hermes in October 2001. Under construction since 1979; currently approximately 60% complete

will be far less than claimed. The project proponent, Tehri Hydro Development Corporation (THDC), is a joint venture of the Government of India and the state government of Uttaranchal.

Located on India's Bhagirathi River - the main tributary of the Ganges, Tehri is a dinosaur among large dams. The project was first conceived in 1949 and was approved by India's Planning Commission in 1972. Due to local protests, construction could not start until 1978 and has been halted multiple times. Indian environmentalists believe that the Tehri protests were in fact the first spark of what today has

grown to be a nation-wide movement against large dams in India.

In 1978, the Committee to Oppose the Tehri Dam or the *Tehri Bandh Virodhi Sangharsh Samiti* (TBVSS) was formed. TBVSS succeeded in pressuring authorities to review the project on several occasions. The project was abandoned in the mid 1980s after being sharply criticized on environmental grounds by a government appointed review committee.

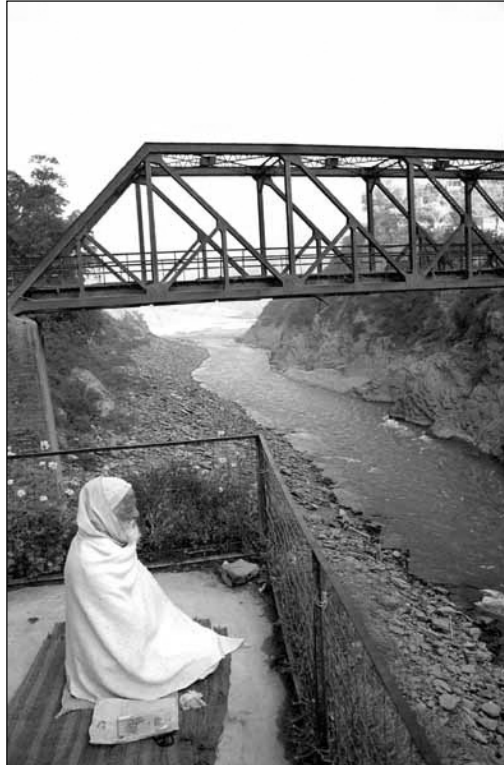
In 1987, the project was again referred to a committee of the Ministry of Environment to assess its safety and environmental and social impacts. This committee unanimously ruled against the project in 1990, but the Indian government overruled its findings and restarted the project. Then, after a 74-day hunger strike in 1996, Sunderlal Bahuguna, a Ghandian activist and long-time opponent of the dam, forced the government to set up a review of the seismic, environmental and resettlement aspects of the project. The *Hunamantia Rao* Committee submitted its report and recommendations in 1997. The government failed to implement most of the committee's recommendations, especially those regarding resettlement, and has continued forward with the project.

The first phase of reservoir filling began in December 2001, when two of four tunnels diverting water around the dam were closed and parts of Tehri Town were submerged. The last two tunnels, at a higher elevation, are due to be closed in December 2003 in spite of the complete failure of resettlement, and project-affected peoples' continuing protests.

ECA Support

In October 2001 Germany's Chancellor, Gerhard Schroeder, personally took the decision to

provide export guarantees for this controversial project. Siemens, one of Germany's largest companies, put the application forward in order to export switchgear for the dam's powerhouse. Although support for Tehri was hotly debated in Germany, the Chancellor overruled the many critics of the project both within the German Government and the German Parliament. On the basis of the Hermes guarantee, Germany's state-owned bank, the KfW provided an export loan of US\$35 million for Siemens' contribution to Tehri.



Sunderlal Bahuguna's morning meditation in front of the Bhagirathi Ganga River. He says that he keeps an eye on the river as one would a sick relative.

Photo: © R S Grove (2003)

Impacts

Environmental Impacts

Obsolete Dam Design and Seismic Risks Threaten Millions

The Tehri dam site lies in one of the world's most earthquake-prone regions with several fault lines traversing the project area.¹ The design of the dam was finalized in the 1960s when scientific understanding of seismic hazards and seismic engineering solutions were far less advanced than today. The Tehri Dam is sited in the 'Central Himalayan Seismic Gap,' an area where an extreme earthquake event is overdue. The dam is not adequately equipped to withstand earthquakes of the magnitude expected during its life span. Dr. Vinod Gaur, former

director of the *National Geophysical Research Institute of India* and member of the Environmental Appraisal Committee that investigated the project on behalf of the government, has strong reservations as to the safety of the dam. Tehri was designed to withstand earthquakes of 7.2 on the Richter scale, while Dr. Gaur and other international experts expect earthquakes of 8.5 and more in this region. One of the leading seismologists in the world, Professor James Brune, has described Tehri as "one of the most dangerous dams world-wide." Even ICOLD, the international lobby organisation

of the dam industry, categorises the location of Tehri as “extremely hazardous.”

The Environmental Review Committee of the Indian Government came to the following conclusion in its 1990 appraisal of Tehri:

Considering the almost total certainty that a strong earthquake of magnitude greater than 8.0 on the Richter Scale will occur in the region during the life of the dam, and considering that the dam design does not provide for such an earthquake, the Committee has no option but to conclude that construction of Tehri dam as proposed, involves totally unjustified risks. The magnitude of disaster that would follow, if the dam collapsed, strengthens the Committee's opinion that approval to the construction of this dam, as proposed, and at the present site would be irresponsible.²

If the dam fails or a major landslide causes a huge wave to overtop the reservoir, a 260-meter high flood wave would crash down into the densely populated valleys below the dam, burying the towns of Rishikesh, Hardwar, Bijnor, Meerut, Hapur and Bulandshahar within hours and devastating large areas of the Gangetic Plains. While estimates range to as low as half a million, a *Newsweek* article reporting on new scientific studies on Himalayan seismology put the estimates as high as 10 million people.³

Human Rights Impacts

The Poor Subsidizing the Rich

Villages upstream of the dam have been denied permission to draw drinking water from the river, since India's Central Water Commission maintains that river water must be reserved for the dam. Sunderlal Bahuguna, one of India's leading environmentalists and winner of the *Right Livelihood Award*, argues that the project will amount to a massive transfer of water from the Himalayan region to New Delhi, where the average per capita consumption of water is 250 liters per day as compared to 10 liters per day for the villagers of the Tehri region. “The Tehri project is stealing from the poor to subsidize the rich,” says Bahuguna.

Forced Resettlement

Because no official resettlement plan has ever been prepared, it is difficult to know how many people are directly and indirectly affected by the reservoir. Officially, the project sponsor THDC puts the number at 67,500 project-affected people. The 1990 Environmental Impact Assessment for the project, however, puts the official number at 97,000.⁴ What is clear, is that the majority of those affected have not yet been resettled and the present resettlement sites face enormous problems.

After almost 30 years of construction, there is still no resettlement plan for the project-affected people. Some cash compensation has been paid to

some project-affected people, others have been given new houses, and the rest have been given nothing. Among those officially recognized, only half of the fully-affected, and very few of the partially-affected families have been resettled. In most cases, the land allotted is of poor quality or with multiple ownership claims. Data issued by the resettlement agency in March 2001 shows only 28% of the project-affected people had been resettled overall and approximately 50% of the people of Tehri Town had been resettled. Reports of local NGOs state that around 12,000 people in Tehri town are still waiting for resettlement.

The 1990 EIA which supported the Ministry of

Environment's recommendation to halt the dam states:

[T]he Committee notes with anguish that the condition of the rural population so far rehabilitated is appalling, even though a sum of Rs 1117.15 lakhs is reported to have been spent. [...] The families we met had been resettled over ten years back, but still do not have a legal title to their land. [...] The plots given to the displaced persons are mainly rocky and sandy, and not conducive to productive agriculture. [...] The Commissioner, Garhwal Division, informed us that at present land was not available to rehabilitate the remaining families.⁵



Boy in ruins of Tehri town. Residents demolished their houses to get compensation. Those that remain live in the rubble.

Photo: Patrick McCully / IRN

By November 2001, two-thirds of the enormous rock-fill dam had been completed when project authorities published a notice in the local paper, informing the inhabitants of Tehri that they should pack up and leave before the waters rise. The remaining residents are, however, refusing to abandon the town, since no land has been provided and corrupt officials have siphoned off large portions of the monetary resettlement benefits.

Financial Viability Issues

A cost-benefit analysis by the Indian National Trust for Art and Culture Heritage (INTACH) came to the conclusion that the costs of the US\$2 billion project will be at least twice as high as the expected benefits. In INTACH's words, Tehri is "an enormous squandering of public money."⁶

The estimated cost of Tehri Dam went up from US\$612 million in 1994 to US\$1.2 billion in 1999. The 1990 environmental appraisal by the Ministry of Environment predicted the useful life of the dam will be reduced to 30-40 years, from the projected 100 years, due to the huge volume of sediment that will be trapped in its reservoir.⁷ A recent study shows that the projected cost of electricity per unit from Tehri is almost three times the average cost of power supply in the neighboring states of Punjab, Himachal Pradesh, Jammu and Kashmir.

Disclosure and Public Consultation

The Tehri Hydro Development Corporation (THCD) carried out no consultation with project-affected people, either in the planned reservoir area or downstream. No resettlement plan, disaster response plan or decommissioning plan has been prepared, much less disclosed to the public.

Violations of Host Country Law, Treaty Obligations and International Standards

The Tehri Dam violates multiple international standards for involuntary resettlement, environmental review as well as basic engineering good practice. It flies in the face of the recommendations made by the World Commission on Dams. No alternatives were examined, affected people were excluded from the decision-making process, there is no resettlement plan for the up to 100,000 people affected, and the engineering design has been widely criticized by experts. Among other basic studies and plans not conducted for the Tehri Dam are downstream impacts, reservoir rim

stability, water quality, health impacts, and disaster risk assessment and management plans.⁸

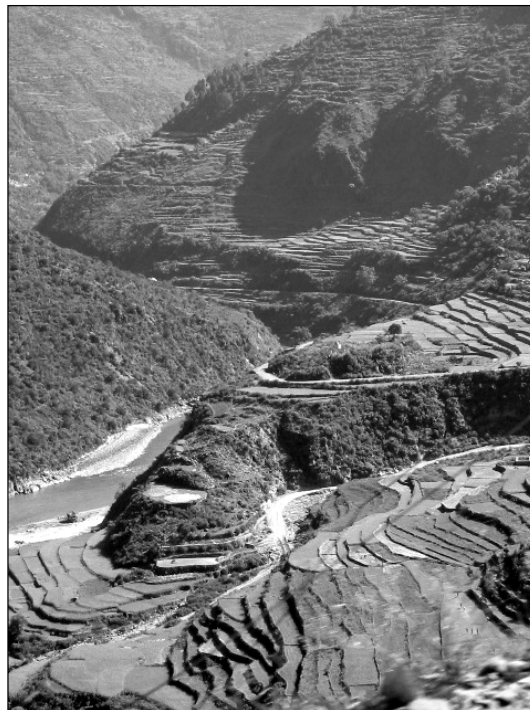
The Tehri dam also violates key norms laid down in Indian national law and is thus being contested in a court case before the Indian Supreme Court. In 1992, environmentalists filed a case in the Supreme Court arguing that project authorities had not acquired the mandatory environmental clearance for the dam. The petition addresses environment, seismicity and resettlement issues. The case is currently pending.

Corruption has been an ongoing concern, and many suspect it is the driving force keeping the dam alive all these years.

In 1996, the *Hanumantha*

Rao Committee was appointed to investigate the social and ecological impacts of the project. Though corruption was not part of its mandate, its final report stated that:

Throughout its visit to the project area, the villages in the submergence area and the resettlement colonies, complaints and corruption at various stages in the process of displacement and rehabilitation formed a recurring theme. [...] The Government should appoint a Committee to examine the incidence of corruption, and then take prompt remedial action.⁹



Agricultural lands to be filled by the Tehri reservoir

Photo: Patrick McCully / IRN

The Indian Central Bureau of Investigation (CBI) is currently investigating six cases of corruption against high-ranking officials of the THDC for embezzlement of public money.¹⁰ The First Information Report of the CBI charges THDC

officials with misusing their position of influence for personal enrichment of over 100 million rupees in alliance with dam contractor Jai Prakash Industries and alleges that a Jai Prakash manager colluded with THDC to enter construction work that never actually took place on the balance sheets. Observers of the project, including the respected Indian economist H.M. Desarda, estimate that about two thirds of the funds for the project have disappeared in the channels of corruption.¹¹

OECD Common Approaches Rev 6

While the Tehri dam was approved by Hermes one month before Rev 6 officially went into effect in November 2001, Hermes had already instituted its own environmental review guidelines in April 2001, six months before the guarantee for Tehri was approved. The Hermes guidelines are largely in line with the main components of the OECD "Draft Recommendation on Common Approaches on Environment and Officially Supported Export Credits: Revision 6." Amazingly, the German Government categorized Tehri as a "C" project, a project with "no environmental impacts," in its screening process.

Approval of this project is evidence that both sets of guidelines fail to screen out patently bad projects. It is clear that environmental and human rights concerns, not to mention fundamental project safety and economic feasibility, continue to take a distant second place to unfettered export promotion.



View of dam preparations
Photo: © RS Grove (2003)

Conclusion

The Tehri Project is perhaps the world's most dangerous dam. It will displace up to 100,000 people and risk the lives of millions of downstream residents. Construction of this dam should be halted and the tunnels re-opened to allow the Bhagirathi River to flow again until project impacts, economic viability, safety and resettlement plans can be properly reviewed. Alternative power generation sources should be fully explored.

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Endnotes:

¹ James Brune, "The Seismic Hazard at Tehri Dam," *Bhagirathi Kipukar*, April 1991.

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³ "Rumble in the Himalayas," *Newsweek International*, September 3, 2002.

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⁵ Environmental Appraisal Committee, "Environmental Appraisal of the Multi-Purpose Tehri Dam Project," Ministry of Environment and Forests, Government of India, February 1990.

⁶ Vijay Paranjpye, "Evaluating the Tehri Dam: An Extended Cost Benefit Appraisal," New Delhi: India National Trust for Art and Cultural Heritage (INTACH), 1988.

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⁹ "Report of Expert Committee on Rehabilitation & Environmental Aspects of Tehri Hydro-Electric Project," Volume I, New Delhi, Oct. 1997.

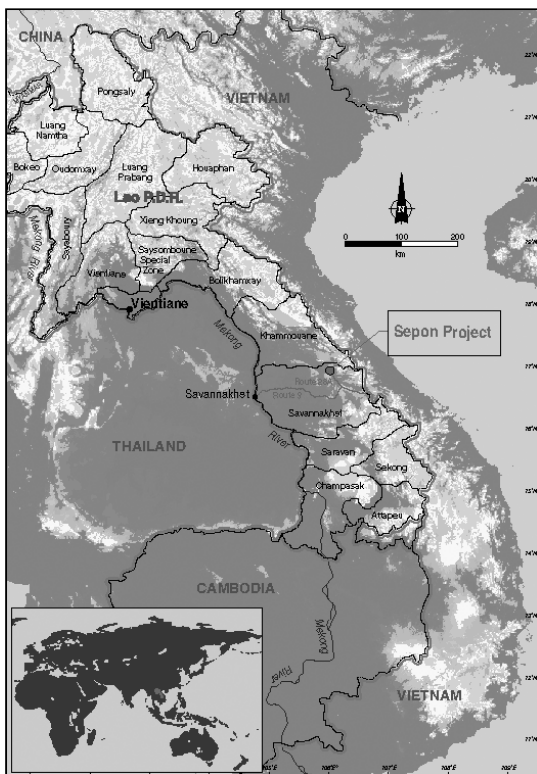
¹⁰ "Case against ten Officials of the Tehri Dam," *Dainik Hindustan*, July 22, 2001.

¹¹ See p.148 in, "Citizens Fifth Report on State of India's Environment," Centre for Science and Environment, 1999.

Lao PDR – Sepon Gold and Copper Mine

Project Summary

The Sepon Gold and Copper mine, covering a 5,000 km² area near the town of Sepon in Southeastern Lao PDR, is the largest foreign direct investment in Lao PDR to date, and first major mine in the country. Australia's EFIC provided political risk insurance for the project in February 2003, based on incomplete environmental impact assessments. The project poses significant and potentially unavoidable human rights and environmental threats such as acid run-off, cyanide tailings leaks and spills, fish kills and the loss of traditional cultivation and spiritual sites by the local indigenous Lao Theung people. The mine had its first gold pour in December 2002 and expects the copper portion of the mine to be in production by October 2003.



Sepon Mine Project Site

Human Rights and Environmental Issues:

- Destruction of sacred indigenous forest sites
- Loss of ancestral territories used for swidden agriculture
- Threatens three endangered species
- River water quality impacts likely to reduce fisheries, impact indigenous and villager access to key protein source
- Violates IFC safeguard policies on Involuntary Resettlement and Indigenous Peoples
- Minimal accountability and weak national legislation likely to result in inadequate cyanide spills monitoring

Population Affected:

Ethnic Phou Thai villages and indigenous Lao Theung villages.

ECAs and Others Involved:

- EFIC (Australia)
- IFC (World Bank Group)

Status: Approved by EFIC in February 2003. The gold mine is currently operational and the copper mine planned for October 2003

Project Description

Located in the Laos province of Savannakhet near the Vietnam boarder, the Sepon Gold and Copper Mine is the first large mine in the country. It sets the scene for more foreign direct investment, particularly in the mining sector, with many other mining leases ready and waiting to be developed.¹ The project was initially co-financed by the World Bank via their private lending arm, the International Finance Corporation (IFC), and the Australian ECA Export Finance and Insurance Corporation (EFIC). The IFC recently withdrew its support, though the reasons are not known. The mine is 80% owned by the Australian company Oxiana and 20% owned by mining giant Rio Tinto.

The mine is set in hills that local people have long known as *Muang Ang Kham*, or the district of the gold valleys. The complex of five open-pit gold mines and one open-pit copper mine will be using a process called cyanide heap leaching technology to extract the gold. This process involves crushing the rock and then spraying it with a cyanide solution to remove the gold, a process that is highly likely to result in contamination of adjacent waterways and groundwater. There are two deposits – gold and copper. The gold deposit is currently being mined and the copper deposit is in the final stages of engineering design with construction expected in early October 2003. The phase one gold mine is expected to produce to produce up to 150,000 oz/a of gold.² The current financing is only for the phase one gold mine.

The project will include an associated processing plant, facilities and infrastructure in the province. The mine life is expected to be approximately 6 years for the phase one gold mines and at least 15 years for the phase two copper mines. When the mine is operational, it is expected to provide up to 1% of the National tax revenue, and 20% of the local government's budget.

Independent analysis of the company's own Environmental and Social Impact Assessment (ESIA) revealed that many of the technical documents and management plans associated with the project were either in a preliminary form or nonexistent. Yet Australia's Export Finance and Insurance Corporation (EFIC) used the ESIA to assess and approve the project.

ECA Support

Australia's Export Finance and Insurance Corporation (EFIC) approved political risk insurance for the project in February 2003. EFIC had introduced new environmental guidelines in December of 2000 after a long community campaign. With this, EFIC went from a reputation for approving environmentally and socially disastrous projects, to one of the first ECAs with guidelines for environmental protection.

Yet the approval of the Sepon Mine illustrates the failure of the new EFIC environmental guidelines and their "business as usual" approach. This project has triggered a review of EFIC's environmental guidelines, currently scheduled for completion in December 2003.

The project was approved after the Draft Recommendations for Common Approaches on Environment and Officially Supported Credits:

Revision 6 ("Common Approaches, Rev 6") went into effect, requiring project screening to benchmark against environmental review standards used by the World Bank Group, among others.

The EFIC and IFC both classified the project as category A, the most potentially damaging type of project. According to the IFC, the mine will potentially have "significant, adverse environmental impact which are sensitive, diverse or unprecedented."

Impacts

Environmental Impacts

The Environmental and Social Impact Assessment (ESIA) discusses the phase one gold mine only, and ignores the much larger phase two copper mine, although there will be cumulative and qualitatively different impacts once this second phase is underway.³ The copper mine will have different geochemical properties of the waste rock with a potential for acid generation, different tailings toxicity characteristics, and use different processing methods. Thus, the full impact of the Sepon mining complex is impossible to predict based on the current environmental assessment. Nevertheless, based on what is known, there are some significant and potentially unavoidable issues.

Cyanide spills and leakage

The Non-Governmental mining watchdog organization, Project Underground, has noted that "No mine has ever avoided leaking cyanide-laced water and waste into the ecosystem." This risk is very real for the Sepon Project. Such a leak could affect the larger Mekong region, since the Sepon Mine straddles a tributary to the Mekong River – the Nam Kok River. A catastrophic failure of the tailings dam embankment would result in decant pond water entering the Nam Kok River. Combined with significant rainfall, cyanide carrying tailings could also be washed into the river, causing a fish kill.

No risk assessment or risk management plans were developed prior to approval. The ESIA simply proposed that "procedures for managing environmental incidents involving hazardous substances will be prepared in detail during the detailed design phase."⁴

Acid generation through oxidization of waste rock is most likely to be an issue at two of the gold pits. Effective encapsulation of all acid-generating material and prevention of acidic run-off entering local river systems will be an ongoing challenge at these pits, and the likelihood of at least some leakage is quite high. An examination of local topography and the conceptual waste rock design suggests that the Nam Khiang River upstream of Ban Vieng village will be susceptible to acid leakage. There are no contingency plans to contain acidic leakage in the ESIA.

Increased on-site soil erosion during the construction and operational phases of the open-pit mines will have a direct impact on water quality and fisheries due to silt loading and sedimentation.

The Aquatic Fauna Study, on which impacts are assessed, is deeply flawed. It was carried out in the dry season, and likely underestimates the total fish catch and consumption levels. Of the 5 most common species of fish caught for food in the project affected area, three species (*Hampala macrolepidota*, *Mystus nemurus*, *Pristolepis fasciata*) are 'deep pool' habitat species which local villagers rely on.⁵ Increased sediment loads and river-bed deposition during construction will flatten out river-bed topography and fill in these deep water pools, effectively eliminating their habitat.

Increased turbidity and suspended sediment loads are likely to have a direct impact on the seven migratory species identified in the project-affected area. The Aquatic Fauna Study identifies three endangered and one critically endangered species in the project-affected area, yet makes no recommendations for avoiding or mitigating impacts. Although the ESIA claims there will be no up-stream impact, sediment-laden stretches may act as a barrier to migration and deplete fish stocks upstream, reducing a key food source to three villages on the Nam Khiang tributary.

Human Rights Impacts



Lao army pontoon barges waiting to supply the Oxiana goldmine, stranded by the monsoon rains
Photo: Rod Harbinson / www.diversityphotos.com

Community development

Oxiana proposes to effectively sub-contract their community development responsibilities in an attempt to "place overall community development issues at a reasonable distance away from its day-to-day community affairs operations"⁶ The company has provided a Community Trust Fund

that has been widely criticized by NGOs. There are serious questions surrounding its viability, accountability and effectiveness. The operations of the fund have not been clearly defined, leaving it vulnerable to corruption and the failure of community development programs.

A lack of both organizational and monetary commitment to community development is

apparent in the company's statement that the project should not act as a "quasi-development agency," despite its role as the largest foreign investor in the country.

Forest-Dwelling Indigenous Lao Theung People Significantly Affected.

The Sepon project includes lands occupied by the Lao Theung indigenous people and Phou Thai ethnic villagers. However, the Community/Indigenous Peoples Development Plan (C/IPDP) does not differentiate between the Lao Theung and the Phou Thai. As a result, the specific relationship between the Lao Theung peoples and their ancestral lands is effectively ignored.

The destruction of spiritual sites important to the Lao Theung people and their loss of access to forest lands, used to practice their traditional swidden agriculture over the millennium, could mean the permanent loss of their cultural identity.

Impacts on spiritual values were frequently raised at community meetings. "What will be the effects on sacred and spiritual sites, land use and local people?" "There is a concern that the project will affect the spiritual and historic places in this area."⁷ Yet nowhere in the ESIA or associated documents is the Lao Theung's spiritual, social, economic, or cultural relationship with their ancestral territories and natural resources

adequately addressed. This contravenes the World Bank's Operational Directive on Indigenous Peoples, OD 4.20, which calls for specific development initiatives targeted at indigenous groups, irrespective of the prevailing national legal framework.⁸

Loss of livelihoods and food security

The Lao Theung indigenous communities depend on swidden agriculture, with its cycles of forest clearing and regeneration in secondary forests. The expectation that the Lao Theung will be able to effortlessly adjust to sedentary agriculture is unrealistic. Even the ESIA recognizes what it calls the "culturally based resistance of the Lao Theung to paddy cultivation."⁹ The project fails to acknowledge the food security and cultural identity impacts of the Lao Theung people losing their ancestral lands, and provides no land-for-land compensation.

The Projects Compensation Policy states that "the project will not replace swidden land lost to the project nor will it make any continuing payments for any such land lost. A one-off payment for loss of production will be made."¹⁰ Meanwhile, paddy land lost to the project will be compensated with replacement lands. This clearly discriminates against the Lao Theung people and conflicts with World Bank Operational Directives on Involuntary Resettlement.

Local Phou Thai ethnic villagers and the Lao Theung are both highly dependent on fisheries in the Nam Kok River and its tributaries. These catches constitute their main source of protein. Average fish consumption is 141.2 grams per day per capita, or 51.5kg annually.¹¹ The very high dependence on fish as a primary food source means that likely water quality and fish habitat degradation could have a devastating impact on access to adequate food for project-affected people, in violation of Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). ICESCR recognizes the "fundamental right of everyone to be free

from hunger." Removing the primary source of sustenance constitutes a violation of project-affected people's Economic, Social and Cultural Rights.

Financial Viability Issues

One percent of Lao's national revenues and 20% of the local government's revenues will come from Sepon Mine. The development impact cannot be underestimated. Considering the non-renewable nature of mineral exploitation, the ability of a mining project to contribute to meaningful, sustainable regional development is dependent on strategic reinvestment of earnings.

Yet, the relationship between the mine and wider regional development plans was not addressed and very little assessment was made concerning the ability of the regional economy to adjust after the mines close. This puts in question the 'sustainable development' mandate of Rev 6.

The Community / Indigenous Peoples Development Plan (C/IPDP) asserts that avoiding economic

dependence on the mine will help reduce post-closure social disruptions. While such an approach is debatable for a short-term project, it is indefensible for a longer-life mining project such as the Sepon mine. The two phases of the mine could have a combined life of 40 years, depending on deposits encountered.

The minimalist approach to community development during operations in an attempt to reduce dependency will only succeed in ensuring that very little infrastructure development will actually remain in the area after closure.

Disclosure and public consultation

Lao PDR's current environmental legislation and enforcement is extremely weak, raising fundamental concerns about accountability and effective project monitoring. There is very little assurance that even rudimentary environmental management actions will be performed, despite the introduction of environmental legislation in 2001 and 2002. The relative inexperience of the



Rice paddies in Vilabouly district, area to be developed for mining
Photo: Rod Harbinson / www.diversityphotos.com

Lao PDR government in dealing with the mining industry only exacerbates this situation. The Environmental Management Plan (EMP) and associated conceptual management plans for various environmental impacts are vague and incomplete.

A full Rehabilitation and Mine Closer Plan (RMCP) should be a precondition of project authorization, and was in fact a condition of EFIC support. However, since this was not prepared prior to project approval, project-affected people were not adequately consulted and there is no guarantee sufficient resources will be made available. There are no monitoring or compliance mechanisms to ensure an adequate plan is developed and implemented, nor is there any binding requirement that effective mine closure will occur.

Current restrictions on local NGO activity within Lao PDR emphasize the need for involvement of international NGOs and research organizations with an interest in the region. IFC guidelines for preparing a Public Consultation and Disclosure Plan requires not only identification of 'project affected groups,' but also 'other relevant stakeholders,' referring specifically to 'local and national environmental and developmental non-governmental organizations', 'international activist groups' and 'research institutes.'¹² Yet, despite the fact that they have worked in the Sepon area since 1992, Oxfam Laos was only contacted in February 2002.

OECD Common Approaches Rev 6

This project was approved by the EFIC under Common Approaches Rev 6, despite clear evidence that project proponents failed to make minimal adjustments to prevent or mitigate the documented adverse environmental and social impacts. The project proponent ignores the existence of the Lao Theung indigenous people in the project area, and consequently provides shockingly inadequate compensation for the loss of ancestral lands upon which their sustenance and way of life is based. Severe potential environmental hazards are inadequately addressed and only limited, vague references are made to developing future mitigation and mine closure plans.

The fact that this project could be approved under Rev 6 is evidence that the provisions in these non-binding guidelines are inadequate. Without the possibility to monitor key points of the decision-making process, projects such as the Sepon mine

can be approved, in clear violation of the stated intent of the Common Approaches.

Conclusion

The Sepon Gold and Copper Mine is an example of the kind of development typically supported by ECAs: it is good for the exporters and project sponsors, but of questionable development value to Lao PDR, and it will have significant and irreversible impacts on project-affected peoples. The loss of land used ancestrally for swidden agriculture threatens to destroy the Lao Theung indigenous people's way of life. Local livelihoods based on fishing and paddy agriculture are at risk from silt loading, sedimentation and potential cyanide spills. Yet inadequate environmental review and the lack of mitigation measures mean that these impacts have not been addressed.

Because of the lack of public disclosure and woefully inadequate public consultation, none of these concerns were brought to light during the project approval process. However, since no information was made public, EFIC was able to classify it as Category A and still sail through the approval process, making a mockery of the guidelines.

The Sepon Mine should provide a cautionary example to ECAs and the OECD Secretariat that the current Common Approaches for environmental review are inadequate and in need of strengthening.

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Endnotes:

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⁴ "Sepon Project – Environmental and Social Impact Assessment (ESIA) – Volume 2: Main Report," September 2001, Section 8.8.7, as cited in Neilson, 2002.

⁵ Sepon ESIA, September 2001 – Volume 5 Appendix 3: Aquatic Fauna Study, September 2003, pg. 11-19, as cited in Neilson, 2002.

⁶ Sepon ESIA, September 2001 – Community/Indigenous Peoples Development Plan, p26, as cited in Neilson, 2002.

⁷ Sepon ESIA, September 2001 – Attachment 4: Public Consultation and Disclosure Plan, p. 3 and 9, as cited in Neilson, 2002.

⁸ World Bank, World Bank Operational Manual, “OP 4.12: Involuntary Resettlement.” December 2001. (Replaces OD 4.30 *Involuntary Resettlement*) OP 4.12 states that “resettlement of indigenous peoples with traditional land-based modes of production is particularly complex and may have significant adverse impacts on their identity and cultural survival. [...] When it is not feasible to avoid such displacement, preference is given to land-based resettlement strategies for these groups [...] that are compatible with their cultural preferences and are prepared in consultation with them.”

⁹ Sepon ESIA, September 2001 – Volume 5 Appendix 14: Baseline Studies, p25, as cited in Neilson, 2002.

¹⁰ Sepon ESIA, September 2001 – Volume 3: Resettlement Action Plan, p.14, as cited in Neilson, 2002.

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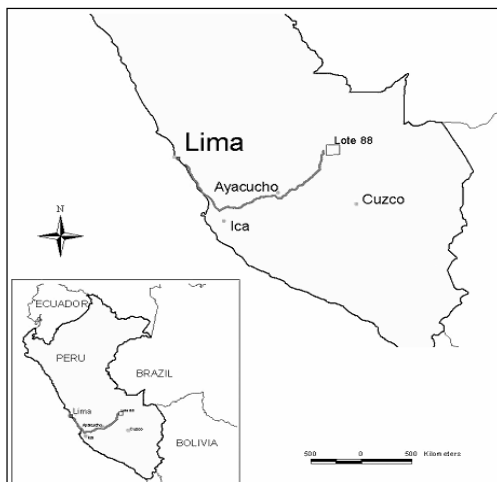
Peru – Camisea Gas and Gas Liquids Project

Project Summary

The US\$1.5 billion Camisea Gas Project will benefit some of US President Bush's closest corporate campaign contributors while risking the destruction of important parts of the Amazon rainforest, threatening indigenous peoples, and endangering one of the most important marine ecosystems in the hemisphere. Dual pipelines will carry natural gas from the Amazon over the Andes to Lima for domestic use and natural gas liquids to a port 200 km south of Lima where it will be processed and exported. Five ECAs are either supporting or considering support for this controversial project. At press time, it is unclear if the US Export-Import Bank (Ex-Im) will indeed finance the project as Board votes have been delayed due to public pressure.

Project Description

The project links two gas fields located in the remote Urubamba Valley in Peru's southeastern Amazon rainforest, to the coast with 714 and 540 kilometer-long pipelines. The infrastructure and pipelines are in some of the most biologically



Camisea Project

Human Rights and Environmental Issues:

- Uncontacted and contacted indigenous communities in Peru's Amazon face increased disease and the loss of fish, game, and clean water
- Destruction of pristine Amazonian rainforests, including protected reserve areas
- Massive erosion along the pipeline route has contributed to decimated fish populations in rivers and streams and has threatened pipeline integrity, risking spills
- Fractionation plant to be built next to protected marine reserve, in violation on Peru's treaty obligations under the Ramsar Convention

Populations and Sensitive Areas

Affected:

Nahua, Kirineri, Nanti, Machiguenga and Yine indigenous groups; Kugapakori Nahua Reserve, Vilcabamba Communal Reserve, Paracas National Reserve (and other National Parks, such as Manu and Otishi, that are threatened by indirect project impacts)

ECAs Involved or Considering

Involvement:

- Ex-Im Bank (US, \$213 million guarantee)
- SACE (Italy, \$20 million guarantee)
- BNDES-Exim (Brazil, \$110 million)
- BICE (Argentina, guarantees)
- Ducreire-Delcredere (Belgium, \$170 million investment insurance)

Status:

Approximately 60% complete; LNG expansion project in planning stage.

diverse areas of tropical Amazon rainforest as well as rugged Andean terrain. One pipeline goes to Lima and the other to a NGL fractionation plant in the buffer zone of a coastal wetlands and marine reserve protected under the Ramsar Convention. The gas fields in the rainforest will include 4 drilling platforms, a processing plant, heliports, worker camps, sludge pits, and water and waste disposal facilities.

Already, the project, which is 60 percent complete, has run into difficulties, including demands by Peruvian groups for fundamental project changes, international protests, US\$1 million in fines for environmental damage, worker strikes, the kidnapping of 60 pipeline workers by Shining Path guerillas, and repeated financing delays at Inter-American Development Bank (IDB) and Ex-Im. Two Texas-based companies involved with the project, Hunt Oil and Halliburton's Kellogg Brown and Root (KBR) unit, have close ties to the White House, raising questions of political pressure on Ex-Im and the IDB to approve the project, despite serious environmental and human rights concerns.

Nearly 75 percent of gas extraction operations are located inside a Reserve for the protection of nomadic indigenous peoples, many of them previously un-contacted but now facing forced contact with construction crews. Many of these peoples lack immunity to common illnesses and are vulnerable to introduced disease from project workers or from illegal loggers and others who follow in their wake.

The gas fields, with 11 trillion cubic feet (TCF) of proven and provable gas, were first prospected in the 1980s by Shell Oil and are currently being developed by an international consortium led by Texas-based Hunt Oil and Argentina's Pluspetrol. A separate consortium including Hunt, Peru's Tecgas, Pluspetrol and four other companies was awarded the pipeline contract. The distribution contract was awarded to Tractebel Electric and Gas International of Belgium (a subsidiary of Suez, of France). Estimated project costs for the project are US\$1.54 billion. A second phase involving gas liquefaction and export of LNG would add between US\$1.8 and 2.52 billion, for a potential total of US\$4.06 billion.¹ Halliburton's Kellogg Brown and Root (KBR) unit is a lead contender for the US\$1.1 billion LNG liquefaction plant contract if Hunt Oil proceeds with plans to export LNG to the US by 2006.

According to an Ex-Im Bank due diligence assessment carried out, impact mitigation measures for Camisea are "woefully inadequate,"

and the project will result in "irreversible impacts" and the "spread of non-indigenous diseases." It has already caused "massive landslides" in fragile rainforest areas traversed by the gas line.² According to indigenous communities and field studies, fish and game have declined dramatically, and the health situation is deteriorating in the Urubamba Valley. Populations living in isolation are especially vulnerable to disease.

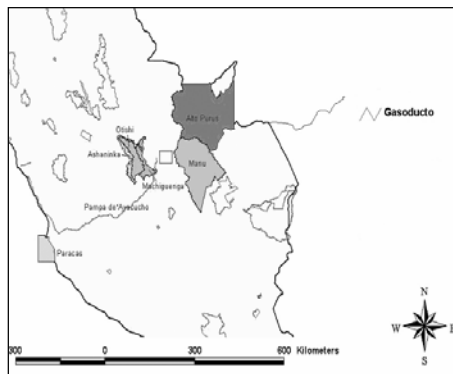
Both Citigroup and the Overseas Private Investment Corporation (OPIC) have pulled out of the project due to environmental and social concerns.³

ECA Support

Ex-Im, which has been considering support for the project, would be backing the largest component of the financing – with guarantees for up to \$213 million – and the development banks IDB and CAF are also considering lending to the project. Export credit agencies SACE (Italy), Ducreire-Delcredere (Belgium), BNDES (Brazil) and BICE (Argentina) are also supporting – or considering support for – the project.

Ex-Im's potential support for the project has been highly controversial in the US. Close ties between directors at Hunt Oil and Halliburton's Kellogg Brown and Root and members of the Bush Administration and the project's clear violations of the Ex-Im's own environmental guidelines have made lawmakers and government agencies uncomfortable. Directors, employees and staff of Hunt oil have contributed over US\$1 million to the Republican Party since 1995, according to the Center for Responsive Politics. Officials at both companies have been major donors to Bush election campaigns and were involved in Vice President Cheney's controversial energy plan.

Officials from Italy's SACE revealed in March 2003 that their support for the Camisea Project was in limbo due to the severe financial problems of consortium members and market weakness. SACE commented that the project's environmental and social impacts were very worrying and admitted that "their gut feeling on



Location of significant protected areas in relation to Camisea project

the project was not good.” SACE’s decision on Camisea financing has yet to be taken.⁴

Impacts

Environmental Impacts

Both Ex-Im’s internal assessment and NGO reports point to the project’s failure to follow industry and international standards for environmental mitigation, relations with indigenous peoples, and good project design. There have already been massive landslides and soil erosion along the pipeline’s extremely steep route. Erosion during rainstorms has washed thousands of tons of soil and vegetation into local rivers, leaving the pipeline unstable and vulnerable to failure. River siltation has decimated local fish stocks.⁵ “Erosion of soil into stream channels and the Camisea River has caused and will continue to cause significant indirect impacts on these aquatic ecosystems. These effects can be considered irreversible over the span of the next several decades.” (URS, 6-3)

Effluent test results from the project’s wastewater treatment plant show it currently violates Ex-Im guidelines for discharge water quality: maximum water effluent temperatures was five times higher, total suspended solids levels were 25 times higher, total residual chlorine levels were three times higher, and total fecal coliform levels were 12 times higher. (URS Table 5-2)

Even basic site management to protect project assets has not been conducted along the right-of-way (ROW). “In spite of engineered erosion control efforts, massive areas of soil erosion have developed. In places the erosion [...] is so extensive that portions of the ROW have eroded away, exposing flowlines and the diesel line. Such ineffective mitigation measures greatly increase the likelihood of a rupture during the operation phase of the project.” (URS, 4-3) “In the event of heavy rains, which are common in the region, failure of buried flowlines and diesel line along these ROWs is a distinct possibility that would cause substantial secondary impacts.” (URS, 4-4)

Long-term impacts of the Camisea project include opening access to a previously isolated region of high biodiversity. “Access will lead to continued loss of forest cover, wildlife habitat loss, fragmentation, reduced forest biodiversity and reductions in populations of important plant and animal species over large areas,” according to the Ex-Im report. “Such effects are negative, significant, long term and largely irreversible without effective mitigation through project operation and after closure,” the report concludes.

At the pipeline’s coastal terminus, the project also threatens one of Latin America’s most important marine reserves, the Paracas National Reserve, Peru’s only marine sanctuary and home to such rare species as Humboldt penguins and green sea turtles. Paracas is on the Ramsar List of Wetlands of International Importance (Convention on Wetlands, Ramsar, 1971). Peru adopted the Ramsar Convention in 1992. In June 2003, the Ramsar Executive Secretariat wrote to

Peru’s President Alejandro Toledo, Ex-Im Bank President Merrill, and IDB President Enrique Iglesias, suggesting that the Camisea project is in violation of Ramsar Convention provisions.

According to the Ex-Im report, the NGL plant was sited in the buffer area of the Paracas Reserve, despite the fact that the project is “ill-prepared for a spill of any magnitude;” gas leaked from the underwater pipeline could kill fish, mammals, and birds - many of them

endangered; and alternatives were not considered.⁶ The EIA for the NGL fractionation plant suffered from the “downplay of potential impacts to the marine and social environment during construction and operation. Sufficient baseline analysis was not conducted.... Fisheries direct and indirect impacts were rarely and not quantitatively defined. Resulting economic impacts from fisheries impacts, the livelihood of this community, were not mentioned in the EIA.” ... “The EIA shows a lack of understanding of noise on the marine environment....” (URS, 4-29)



Camisea Pipeline cutting through Amazon rainforest
Photo: Amazon Watch

Human Rights Impacts

Although the Nahua-Kugapakori Indigenous Reserve was established for the protection of the indigenous people living there, approximately 75% of the project concession is located inside the Reserve. Over its 40-year life, the Camisea project will have irreparable impacts on the lives of those who live in and around the Reserve. The Reserve is home to the Nahua, Kirineri, Nanti, Machiguenga and Yine indigenous groups. Past contact between indigenous peoples and outsiders has already proven disastrous – at least 42 per cent of the Nahua died from diseases contracted when Shell did initial prospecting in the 1980s.

Routes cleared for the pipelines will open up access to previously isolated indigenous lands to illegal loggers, poachers, colonists, and farmers, threatening to destroy large sections of rainforest.

There are reports that many indigenous people have been forcibly contacted by project workers. These inexperienced companies with poor environmental records are showing neither the will nor the ability to avoid the serious environmental and social impacts, and government oversight is weak.

Ex-Im's report states: "In much of the Kugapakori reserve in the eastern portion of [the concession area], Nanti and Nahua people exist in semi-isolation. The flowline ROW, access road and the temporary Camisea River bridge construction has created the potential for increased access." (URS, 4-11)

The report identifies significant direct and indirect cultural, social and economic impacts from the Camisea Project including loss of hunting and fishing resources fundamental to survival, and exposure to non-indigenous diseases.

A fact-finding mission to the project-affected region interviewed a government health worker in Shivankoreni, who said, "Above all, we are worried about those under 4 years old. ... They no longer catch a single fish a day. What do they eat? Nothing."

These impacts describe direct violations of ILO Convention 169 on Indigenous and Tribal Peoples and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR).

Financial Viability Issues

The project is built on an unproven market for its product. Although Camisea's gas is destined for the Peruvian domestic market, Peru currently lacks a natural gas market. To reduce the investment risk, the consortium has signed some take-or-pay contracts, which oblige customers to pay for the gas, whether or not they are able to use it. State-owned electricity company Elecoperu has guaranteed a minimum off-take of 730 million cubic meters of natural gas per year, or 25% of the initial projected production.⁷

While the project is currently 60% complete, there has been no transparent system put in place for the management of project revenues. There is a fear that, as a result, the revenues accruing from this gas – Peru's patrimony – will not be well spent or will be squandered on waste and corruption. In addition to this concern, the project will also incur a large amount of

external costs, such as analyzing social and environmental impacts and supervising compliance, not covered by the project sponsors. The IDB has provided a 25-year US\$5 million loan to cover these costs to the Peruvian government, thus increasing the country's debt load.

According to a Platts Power report, the Camisea project "missed the boat" when Shell passed on developing the reserves in the 1980s. Hunt Oil hopes to export LNG from the 13 trillion cubic feet Camisea reserve to California, but that would only come in a second phase in 2006, after gas is first supplied to Lima. The delay could leave the project vulnerable to other suppliers from Asia and Australia getting to California first, and locking up the market. Any additional supply would lower prices below economical rates. "The US market is risky for everyone investing billions of dollars in LNG production, because you have to take US prices. ... There is a limit to how much LNG you could put into



*Nahua villager with respiratory disease due to contact with the outside world.
Photo: Shinai Serjali*

California without affecting price,” says LNG consultant Andy Flower, quoted by Platts.⁸

Disclosure and public consultation

23 major Peruvian NGOs released a statement in July 2003 outlining serious flaws in the project and recommending significant changes in location and construction methods to avoid human rights violations and comply with international environmental standards before public financing is approved.

The URS study highlights the inadequacy of public consultation, land purchase procedures, and alternatives analysis for the NGL plant to be sited on Peru’s coast, including an “absence of appropriate social and environmental analysis and potential impact evaluation (risk analysis) during site selection. Absence of community involvement or input in site selection, and communication during gathering stages.” (URS, 6-4) “The proposed site was purchased shortly after the 5 alternative sites were identified, in advance of the full alternatives evaluation. *The timing of this purchase, and the method by which a change in land use designation was obtained, and lack of complete stakeholder participation are of concern.*” (URS, 4-29)

Release of the URS report came only after it was specifically requested through the Freedom of Information Act – and even then it was released only *after* senior staff deliberations on taking the project to Ex-Im’s Board of Directors in July 2003, thereby precluding valuable public input at that time on important environmental and social issues of concern to US citizens and taxpayers. Failure to release all relevant environmental information used by Ex-Im in its consideration of the Camisea project means that project-affected people and US taxpayers are denied meaningful participation in the conduct of public affairs, in violation of Article 25 of the International Covenant on Civil and Political Rights (ICCPR).

Violations of Host Country Law, Treaty Obligations and International Standards

Project sponsors claim they plan and intend to comply with international guidelines and agreements such as Ex-Im and IFC Oil and Gas Standards including the World Bank Pollution

Prevention & Abatement Handbook.⁹ Yet even the pipeline consortium’s own environmental compliance consultant, Knight Piesold, has criticized the pipeline contractors for failing to control erosion and violating a 50-foot width limit along the route, and called for construction to stop until erosion problems were fixed.

In November, 2002, Peru’s Ministry of Energy and Mines fined the Camisea pipeline consortium US\$1 million for clearing excessive amounts of land and building unauthorized access roads in parts of the protected Nahua-Kugapakori Indigenous Reserve.¹⁰

The Ex-Im Bank evaluation of Camisea’s impacts confirms violations of internationally accepted standards such as World Bank and IFC safeguard policies and the recently announced Equator Principles promoted by ten leading private banks, representing 30% of the

project loan syndication market globally.

In addition to violating a range of Peru’s environmental laws and encroaching on protected reserves, the project violates Peru’s treaty obligations under ILO Convention 169 on Indigenous and Tribal Peoples, which Peru ratified in October 1994. ILO 169 Article 7 states, “The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use....”

The Camisea project also violates World Bank Operational Directives OP/BP 4.10 and OD 4.20 which require that “the Borrower takes into account their individual and collective rights to use and develop lands that they occupy to continue to have access to natural resources vital to their subsistence, to the sustainability of their



Home in Serjali, Nahua territory, within the Kugapakori-Nahua Reserve
Photo: Shinai Serjali



*Nahua woman
Photo: Shinai Serjali*

cultures....with particular attention to their individual and communal or collective rights to be protected against encroachment....”

OECD Common Approaches Rev 6 Ex-Im’s approval of the Camisea project would be in full violation of its own environmental review guidelines and could undercut the US government’s leading role within OECD countries to promote higher standards for export credit agencies. Because Ex-Im did not sign on to the Common Approaches on Environment and Officially Supported Export Credits: Revision 6 of December 2001, it is not bound by that voluntary OECD framework. Nevertheless, an approval of the Camisea project could derail the negotiations currently taking place within the OECD for a revision and potential strengthening of the Common Approach guidelines.

Until now, the US Government has pressed for World Bank standards and safeguards as well as transparency of Environmental Impact Assessments as requirements for any common agreement amongst ECAs, exerting a leadership role in this respect.¹¹ However, approval of Camisea just as those OECD negotiations enter a critical phase will send a signal that the US may be taking a weaker stance in terms of implementation, under the guidance of new President Merrill.¹²

Conclusion

The implementation of the Camisea project to date is causing significant and irreversible harm to indigenous peoples and critical natural habitats. Further construction and subsequent operation present even greater risks. Given this situation, there is widespread consensus among civil society – both in Peru and internationally – that major corrective changes are needed before approval of financing can take place.

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¹ Jan Willem van Gelder, “Financing of the Camisea project” RETRAC Research & Advice, the Netherlands, February 18, 2003.

² URS Consulting Firm, “Environmental and Social Assessment: Camisea Project, Peru,” Export-Import Bank of the United States Report, May 2003.

³ OPIC Director of Environmental Affairs Harvey Himberg provided a document to Friends of the Earth entitled “Projects Rejected on Environmental Grounds During the Watson Administration.” The first bullet in the list states: “A large integrated gas production and process project in Latin America having significant adverse impacts on critical tropical forest and biodiversity resources as well as indigenous peoples who rely on those resources for their livelihoods.”

⁴ Meeting between SACE officials and representatives of international NGOs Amazon Watch, Bank Information Center, Friends of the Earth, Institute for Policy Studies (SEEN) and Italian NGO Campagna per la Riforma della Banca Mondiale, March 25, 2003.

⁵ URS, May 2003, and Patricia B. Caffrey, “An Independent Environmental and Social Assessment of the Camisea Gas Project,” Commissioned by Peruvian indigenous organizations COMARU and AIDSESEP, April 2002.

⁶ URS, May 2003.

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⁸ “Energy – Bolivia and Peru set to ‘squander’ LNG assets,” Loyd’s List International, July 8, 2003

⁹ URS, 2-17, Personal communication by report authors with PlusPetro.

¹⁰ James V. Grimaldi, “Texas Firms Line up U.S. Aid in Peru,” *Washington Post*, November 20, 2002

¹¹ Tuesday Group Minutes, April 2003 by Leslie Greene, Bank Information Center

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Romania - Cernavoda 2 Nuclear Reactor

Project Summary

The proposed CANDU nuclear power plant Cernavoda 2, first conceived in Romania's Ceaucescu era, is failing to meet international nuclear norms and safety standards, and has attracted concern from the European Commission's Environment Directorate-General and civil society groups in Romania, Europe and North America. None of the three EIAs for the project have been made fully available to the public, yet issues of long-term storage of spent fuel and nuclear waste remain unresolved, while risks from earthquakes and accidents have been underestimated.

Project Description

A partially-built 700 megawatt nuclear reactor located on the Danube River near the Black Sea, Cernavoda 2 will cost an estimated US\$700 million to complete.¹ CANDU technology was chosen in the 1970s by Romanian dictator Nicolae Ceaucescu because it can use natural uranium



Cernavoda Project Site
Graphic: CANDU Owners Group

Human Rights and Environmental Issues:

- Inadequate public consultation and disclosure of risks
- Failure to adequately consult neighboring countries on nuclear risks, as demanded by the Espoo and Aarhus Conventions
- Inadequate safety plans for nuclear facilities located in active seismic zones
- Design flaws repeatedly associated with CANDU reactors, threatens environment and health of residents

Population Affected:

Citizens of Romania, Bulgaria, Ukraine and Moldova, in event of nuclear accident

ECA's Involved:

- EDC (Canada, CDN\$328 million)
- SACE (Italy, €118 million)
- COFACE (France, €23 million)
- Ex-Im (US, US\$24 million)

Other financiers:

- Euratom (EU, €223 million)

Status:

Approved by ECAs in January 2003; currently under review by Euratom. Plans are already under way for a feasibility study for Cernavoda-3, involving Atomic Energy of Canada Ltd, Italy's Ansaldo, Korea Hydro & Nuclear Power Co. and General Electric.

from Romanian mines.² The first of five units, Cernavoda 1, was completed in 1996, more than 20 years after construction first began and was notorious for accidents and safety issues as well as for gross labor and human rights abuses during its construction.³ It also left the government saddled with an unsustainable debt that has prompted the government to proceed with this second, equally ill-conceived, project in the hopes of generating revenues from the sale of energy to Italy and other Western European countries. Cernavoda 2 is scheduled to go on-line in 2006.⁴

The plant is located adjacent to the town of Cernavoda, population 20,000, and within 100 kilometers of Constanta, population 310,000. It is

35 km from the border with Bulgaria. Inadequate safety measures or security breaches at this plant could contaminate hundreds of thousands of people in Romania, Bulgaria, the Ukraine and Moldova. Plant effluent discharges to the Danube and potential groundwater contamination have not been adequately assessed for their impact on human and fish life.

ECA Support

The financial package for the deal is complex. The lead project proponent is the Romanian nuclear state-owned company SNN, which awarded a US\$300 million contract to the consortium of Atomic Energy of Canada Limited (AECL), a Canadian crown corporation that designs and markets CANDU reactors, and Italy's state-owned nuclear company Ansaldo Energia.

Société Générale of France arranged a private commercial loan package with SNN in the amount of €384 million, of which €350 million emanated from Société Générale itself, €25 million from the Romanian Development Bank (Société Générale in Romania) and €9 million from Crédit Lyonnais of France.⁵ This package helped finance the purchase of equipment and operations from Western companies necessary to complete Cernavoda 2.⁶

AECL and Ansaldo then secured guarantees on the loan through Export Development Canada (EDC) and Sezione Speciale Per l'Assicurazione Del Credito All'Esportazione (SACE) in the amount of CDN\$328 million (or €202 million), and €118 million respectively.⁷ Two other ECAs, France's COFACE and the US Export-Import Bank provided the final portion of the guarantees on buyer credits for €23 million and US\$24 million respectively. This covered Alstom, General Electric and other subcontractors in the project.⁸

The provision of these guarantees followed a formal evaluation of the project that began in early 2002. This means that the project was approved under the OECD Common Approaches Rev 6 guidelines for environmental review and has supposedly been screened according to its provisions.

As a final note, the Romanian government has itself also provided US\$80 million from its state budget for the project and is committed to providing up to US\$200 million.⁹ Euratom has also been approached by the Romanian government for a €223 million loan.¹⁰ A final decision on approval is expected from the European Commission in September 2003.

Impacts

Environmental Impacts

The environmental risks already associated with a project of this type have been further aggravated by three major issues: lack of disclosure of the full environmental impact assessment (EIA), significant safety concerns in the region, and the unreliable nature of CANDU reactors.

None of the three EIAs carried out for Cernavoda 2 were ever made publicly available in their entirety, but only as summaries. Based on the environmental impact information that has been

released, groups have identified a number of serious environmental impacts that have not been addressed and that pose serious environmental risks to the region.

The Sierra Club of Canada Nuclear Campaign submitted a detailed analysis of the AECL summary, supported by over 70 organizations in 12 countries. Among other things, it critiqued the lack of adequate public consultation, failure to

consider alternatives for meeting projected energy needs, failure to disclose consequences of a nuclear accident or to disclose details of an emergency plan, and failure to present a plan to manage nuclear wastes in perpetuity.¹¹

According to an independent review by the Austrian Institute for Applied Ecology, the official Romanian EIA summary made public by the Romanian government in August 2002 is incomplete, unsystematic, and incoherent due to a lack of relevant maps and data. It concluded that it is impossible to evaluate from the summary whether all necessary data had been collected and whether all project impacts were seriously assessed by the EIA authors.¹²



*Children walk by heat supply sub-station in the town of Cernavoda
Photo: Olexi Pasyuk/ CEE Bankwatch*

The Institute also carried out an independent review of the PHARE study¹³ carried out by the European Commission and found that it fails to cover all the issues required in a full EIA, as required by the European Union Council Directive 97/11/EC.¹⁴ Furthermore, the study does not establish whether a new power station is in fact necessary, what the impact of hot and potentially contaminated water effluent will be on the Danube River, or what impact radioactive effluent will have on the drinking water of villages and towns in the surrounding area. The PHARE report also failed to assess (or grossly underestimated) the seismic risks.

This last point raises significant environmental safety concerns, since the Cernavoda nuclear power plant is located in an area of seismic activity. Since 1979, three major earthquakes have occurred.¹⁵ The adjacent town of Cernavoda has 20,000 inhabitants and nearby Constanta has 310,000 inhabitants.

But the reactor is also subject to another safety concern. CANDU reactors produce plutonium that can be used in nuclear bombs at any time in the next 20,000 years.¹⁶ A January 2002 NGO Fact-Finding Mission to the region discovered that no additional security measures have been implemented at the Cernavoda power plant since September 11th.¹⁷ There is no evidence from the environmental assessment information made public to date that indicates that Cernavoda-2 will be any different.

CANDU reactors are also unreliable. They have repeatedly been associated with spills, design flaws with pressure tubes and feeder pipes leading to premature ageing, routine emissions of tritium (a radioactive form of hydrogen and a known carcinogen), heavy water leaks, and radiation exposure of workers.¹⁸ Cernavoda 1 has born witness to this, having experienced five technical and plant accidents since 1999.¹⁹

Human Rights Impact

Potential contamination of air and water by Cernavoda 2 would violate Romanian citizens' rights to a healthy environment as guaranteed under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Romania ratified the ICESCR in 1976.

Financial Liability

Whereas the Romanian government has said that Cernavoda 2 is a national priority for meeting domestic electricity needs, Romania currently has more than sufficient energy capacity even without

any efforts to reduce energy inefficiencies. Total installed capacity in 1999 was 19,676 MW,²⁰ but peak demand in 1998 was only 6,000 MW.²¹ EU energy experts confirmed that increasing Romania's power generation is unnecessary and constitutes poor prioritizing by the government.²²

Since Romania does not need the energy, top-ranking Romanian nuclear officials report that energy produced at Cernavoda 2 will be exported, preferably to the West.²³ Although export agreements with neighbouring countries have yet to be signed, Italy has already indicated that it would be interested in importing energy from Cernavoda 2.²⁴ This, however, violates the spirit of a 1987 national referendum in Italy that forbids nuclear energy production on Italian soil and the participation of the former Italian nuclear state-owned company in nuclear projects abroad.²⁵

The export of such energy, nevertheless, will be essential for Cernavoda 2 to remain financially viable. Cernavoda 1 ended up costing US\$2.2 billion, created a huge debt burden for Romania,²⁶ and by March 1982, Romania was unable to meet its payments.²⁷ Consequently, special concessionary terms were arranged early on for Cernavoda 2, allowing for a longer payback period and a four year delay before repayment of loans commence.²⁸

Disclosure and public consultation

Of the three EIAs conducted for the Cernavoda 2 reactor, none have ever been released in their complete form. AECL released a summary in December 2001, as did the National Institute of Research and Development for Environmental Protection (ICIM) in August 2002. PHARE conducted environmental, safety, economic, and financial aspects, although it only ever made its inadequate environmental study public.

Informal consultations conducted in Romania by AECL in August-September 2001 were limited to the Constanta region and Bucharest and were based on a Romanian translation of an initial draft summary of the AECL EIA, rather than the complete EIA.²⁹ The meetings were reportedly only attended by "pro-nuclear" NGOs, many of them created by officials currently working for state nuclear agencies.³⁰ Furthermore, these public consultations did not meet the national environmental requirements, as detailed below. The AECL summary was also not made available to the public in Canada until December 2001, after this consultation period. At that time, the Sierra Club of Canada submitted a critique of the summary, but has never received a substantive

response to its observations either from EDC or AECL.

Romanian authorities claim that they held a public consultation on the final Romanian EIA study in September 2002, but no independent civil society groups were informed of the meeting, which was only advertised in one national newspaper.³¹ A NGO fact-finding missions to Romania in January 2003 further established that full EIA documentation was available only in the Constanta local environmental agency and was not easily accessible to all project-affected communities and NGOs.³²

Of greater concern, Romania's pro-nuclear government has targeted NGOs that have publicly opposed the Cernavoda 2 project, labeling them Russian supporters who are working against national interests. The fear of becoming the target of such a campaign has had a chilling effect on Romanian citizens from taking a public stand against Cernavoda 2.³³

Violations of Host Country Treaty Obligations

The AECL consultations were based on inadequate information and consultation with only a small number of affected parties. However, making such information publicly available is an explicit requirement of the 'Permitting Procedure for economic and social activities having an environmental impact' of Romanian Environmental Protection Law No. 137/1995 (Article 4.3.2).³⁴ According to this law, EIAs require public consultations with locally-affected communities and Romanian NGOs before the Environment Ministry can grant an environmental license.³⁵

The Romanian Ministry of Waters and Environmental Protection, arguing that AECL was not certified to carry out an EIA and had failed to meet the national requirements in this matter,³⁶ conducted a second EIA through ICIM. This report was completed in January 2002, but a summary of it was made public only in August 2002.

The Romanian government argues that commercial confidentiality bars further release of information pertaining to the ICIM study. The

1995 Romanian Environmental Protection Law allows the government to withhold commercially sensitive information contained in EIA studies. However, under the UN/ECE Aarhus Convention on Access to Information, Public Consultation and Access to Justice on Environmental Matters (ratified by Romania in 2000), the government is required to give citizens full access to all relevant information of a project's environmental impact assessment.³⁷ Once ratified, international treaties take precedence over conflicting domestic law.

This means that if EDC or SACE based its project review on the AECL or ICIM Study, it was relying on documents that had breached Romanian and international law.

Furthermore, Romania and its neighbors have signed and ratified the Espoo Convention on Environmental Impact Assessment in a Transboundary Context, which came into force in 1997.

(Romania ratified it on March 29, 2001.) Cernavoda 2 is located about 35 km from the Romanian border with Bulgaria. As reported to Bulgarian NGOs last June, the Bulgarian government was never notified by the Romanian government about its intention to go ahead with the project, in breach of Article 3 of the Convention.³⁸ In November 2002, the Bulgarian Ministry of Environment and Waters officially requested information relating to the Cernavoda 2 Nuclear Power Plant from the Romanian Ministry of Water and Environmental Protection. It was only after this specific request that the Romanian government finally sent Bulgaria the English summary of the EIA study, for comments only.³⁹ The Espoo Convention requires notification of potential trans-boundary impacts at the earliest possible moment.⁴⁰ The Environment Directorate-General of the European Commission, recognizing Romania's delay in informing neighbor countries of its plans for Cernavoda 2, requested in June 2003 that Romanian authorities submit complete documentation to Bulgaria.⁴¹



*Romania signs Kiev Protocols to the Espoo Convention on Environmental Impact Assessment in a Transboundary Context, May 2003
Photo: UN Economic Commission for Europe*

OECD Common Approaches Rev 6

This project has been backed by four ECAs, despite evidence that it should not have been approved under Rev 6 until the project impacts had been fully evaluated, and until the project was shown to have complied with domestic law and the Espoo and Aarhus treaty obligations.

The Romanian government failed to consult with neighboring states regarding potential environmental impacts of the project. This violates its obligations under the Espoo Convention. Since this obligation has been part of national law in Romania since 2001, by approving loan guarantees, ECAs have failed to respect host country law, as called for in Article 15.1 of Rev 6, and to meet international standards.

Project-affected people and civil society groups in Romania have not been adequately consulted, as required under Romanian environmental law. As such, the project violates host country standards for environmental review. Again, this is in violation of Article 15.1 of Rev 6.

Because Rev 6 has inadequate requirements for environmental and social information disclosure and public consultation, project-affected populations are denied meaningful participation in the conduct of public affairs, in violation of Article 25 of the International Covenant on Civil and Political Rights. Yet the ICCPR has been ratified by Romania (March 23, 1976), Canada (August 19, 1976), Italy (December 15, 1978), France (February 4, 1981), and the United States (September 8, 1992).

Furthermore, Article 17 of Rev 6 states that “Members should ensure that procedures are in place to monitor, as appropriate, the implementation of projects, to ensure compliance with all conditions of their official support.” Since the inter-creditor agreement has not been made public, it is impossible to assess whether ECAs

have taken all the necessary steps to ensure that adequate monitoring procedures are in place.

Before approving loan guarantees for the project, the four ECAs signed an unprecedented inter-creditor agreement with project sponsors and Société Générale containing various environmental conditionalities. To do so, a consultant was hired to determine which nuclear standards and environmental conditionalities should be followed. The ECAs and bank negotiated these conditionalities among themselves and with the host country authorities, inserting them into the final inter-creditor agreement. Despite repeated requests by civil society, the agreement has not been made public. But this “ad-hoc” initiative was likely costly and inefficient, producing less than ideal results for the ECAs. Costs included hiring the nuclear consultants and several coordination meetings among the four ECAs and project sponsors to define the common standards to be followed for this case.



*Italian protesters voice their opinion in front of SACE
Photo: Antonio Tricarico / CRBM*

Despite this lengthy benchmarking approach, the EIA still failed to produce a complete evaluation of all project impacts, increasing the level of environmental risk for this project. It is unclear why ECAs rushed to finalize the deal, and accepted a higher degree of environmental risk, rather than adequately assessing project's impacts. It is all the more surprising given that the European Commission is still carrying out its own environmental, safety and economic due diligence

assessment of the project, has requested additional information from Romanian authorities, and has placed additional conditions on them. The adoption of single, clear and high international standards and procedures, instead of applying a vague benchmarking approach on a case-by-case basis, would have made the whole process easier, cheaper and less risky for ECAs.

Conclusion

Although there have been no new reactors built anywhere in North America since 1978, and none in Europe since 2001, four Export Credit Agencies

have approved financial support for Cernavoda 2 in Romania. The CANDU technology is known to be prone to spills, premature ageing, routine emissions of tritium, heavy water leaks, and radiation exposure of workers. Not only is there no need for new power generation in Romania, but this ill-conceived project poses potentially grave risks to the populations living downwind of the site.

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Russia – Sakhalin II On and Off-Shore Oil and Gas

Project Summary

A consortium led by Shell Ltd. is operating the Sakhalin II oil and gas project offshore Sakhalin Island in the Russian Far East. Sakhalin II threatens one of the most plentiful marine environments on the Pacific Rim, providing rich fisheries that support the local economy and the indigenous Nivkh people, and vital habitat for marine mammals including the critically endangered Western Pacific Gray Whale. Already in the first phase of the project, fishermen have reported declining catches and fish kills and the Gray Whale population may have been weakened by platform installation and other industrial oil and gas activities.

Now, the proposed second and significantly larger phase of Sakhalin II threatens this environment with the world's largest LNG plant that would dump massive wastes in the Gulf of Aniva, on-shore pipelines to be trenched through wild salmon streams, an off-shore undersea pipeline



Sakhalin II and Sakhalin Island
Graphic: Foundation for Russian American Economic Cooperation

Human Rights and Environmental Issues:

- Threatened extinction of endangered Western Pacific Grey Whale
- Degradation of fisheries and threatened damage to wild salmon runs
- Threatened livelihood and cultural identity of Nivkh indigenous peoples
- Failure to adequately consult project-affected populations
- Manipulation of scientific research

Population Affected:

Nivkh indigenous people and Russian fishing communities on Sakhalin Island

ECAs and investment insurance agencies involved in phase one:

- EBRD (Europe - \$116 million)
- JBIC (Japan - \$116 million)
- OPIC (US - \$116 million)

ECAs potentially involved in Phase two:

- Exim Bank (US)
- JBIC (Japan)
- ECGD (UK)
- SACE (Italy)
- COFACE (France)
- NCM (The Netherlands)

Status:

Sakhalin II Phase One is already producing oil. Project proponent is currently seeking \$5 billion in financing for Phase Two

crossing the benthic feeding habitat of the Gray Whale, along with platform dredging, and the dumping of drilling and other industrial wastes into the sea. Sakhalin II does not apply many important international standards. It could critically impair heretofore healthy Sakhalin fisheries and spell the extinction of the Western Pacific Gray Whale.

Project Description

The Sakhalin Energy Investment Company, a consortium led by Royal Dutch Shell and

including Mitsubishi and Mitsui, began commercial oil production of the controversial first phase of Sakhalin II in 1999. SEIC is now seeking a reported US\$5 billion in financing¹ to construct the additional platforms and undersea pipeline to shore, approximately 800 kilometers of on-shore pipeline down the length of Sakhalin Island, and the world's largest liquid natural gas plant and oil terminal at the island's Southern end.

700,000 people live on the island of Sakhalin, most of them on the southern tip. Island residents include the native Nivkh peoples, who depend on fishing for their livelihoods and traditional culture. The waters offshore of Sakhalin include abundant crab, herring and cod, and one of the few healthy wild salmon fisheries left in the world. The area is also home to 25 marine mammal species, including 11 endangered species, most notably the world's most critically endangered gray whale population, the Western Pacific Gray Whale.



Critically endangered Western Gray Whale with oil platform in the background
Photo: Sakhalin Environment Watch

ECA Support

In 1997, Shell and other project sponsors received a total of US\$348 million from the U.S. Overseas Private Investment Corporation (OPIC), the Export-Import Bank of Japan (JEXIM, now JBIC) and the multilateral European Bank for Reconstruction and Development (EBRD) in first phase financing.

Shell and other project sponsors now reportedly seek a US\$5 billion in financing for the significantly larger second phase of the project. Reports indicate that the project consortium has approached the US Export-Import Bank (Ex-Im) and the Japan Bank for International Cooperation (JBIC). It has also expressed an interest in approaching Italy's Sezione Speciale Per l'Assicurazione Del Credito All'Esportazione (SACE), France's COFACE, the Dutch Nederlandsche Credietverzekering Maatschappij NV (NCM) and the United Kingdom's Export Credit Guarantee Department (ECGD) for phase 2 financing.

Impacts

Environmental Impacts

Whales threatened with extinction.

The icy sea around Sakhalin is teeming with life and creates the perfect, and only, feeding grounds for the endangered Western Pacific Gray Whale. Recent scientific evidence suggests that less than 100 individuals, and possibly fewer than 20 reproductive females capable of bearing calves remain.² The birth rate of Western Pacific Gray Whale exceeds the death rate by only 1%,³ meaning that additional negative impacts from Sakhalin II risks pushing this species over the brink of extinction.

According to a *Wall Street Journal* report, Sakhalin II has dumped toxic drilling muds into these shallow waters off Sakhalin, while the practice is prohibited in

much of coastal Alaska.⁴ It has also carried out underwater seismic blasts as part of their exploration activities. The impact on the whales has been profound. In 1999, scientists for the first time reported "skinny whales," or whales that were showing visible signs of malnourishment. By 2000, 27 - more than a quarter of the population - skinny whales were identified. Scientists fear that continued and expanded oil drilling projects may stop any chance the whales have for recovering.

Sakhalin II fails to meet the World Bank policy on Natural Habitats.⁵ The Natural Habitats policy states, "The Bank does not support projects that, in the Bank's opinion, involve the significant conversion or degradation of critical natural habitats," including "sites that are critical for...vulnerable, migratory, or endangered species," such as the critically endangered Western Pacific Gray Whale. Russian Academician and ichthyological expert M. E. Vinogradov has stated, "Without designing special measures for gray whale conservation, the continuation of the 'Sakhalin-II' project can lead to extinction of this unique population."⁶

While the first phase of Sakhalin II fails to meet World Bank policy on natural habitats, impacts from the enormous second phase is widely expected to be much worse. Degradation of

critical natural habitats associated with the next phase of Sakhalin II include:

- The risk of extinction of the critically endangered Western Gray Whale and other marine species with construction and operation of an additional platform directly adjacent to whale habitat.
- An undersea pipeline routed directly through whale feeding grounds
- Roughly 800 kilometers of pipeline crossing 1100 watercourses along nearly the entire length of Sakhalin Island, to be trenched directly through ecologically and economically vital streams bearing salmon and other salmonid species, including the endangered Sakhalin taimen
- Pipelines will cross 24 seismic faults in this heavy earthquake zone (by comparison, the Trans-Alaska Pipeline crosses 3 seismic faults)
- Construction of the world's largest liquefied natural gas processing facility and oil terminal at the Southern tip of Sakhalin Island which will dump 500,000 metric tons of waste annually into the Gulf of Aniva
- Exponentially higher risk of oil spill associated with the additional drilling platform and increased tanker traffic at the Southern terminus of the island

Irresponsible risk of spills.

SEIC has done little to ensure its oil spill prevention and response system meets recognized international standards. Sakhalin II depends primarily on emergency response equipment stored on the north side of the island, roughly 50 miles from the oilfields and including about 30 miles of often-impassable dirt roads.⁷ Independent experts from Alaska and the Shetland Islands issued a report in 1999 called "Sakhalin's Oil: Doing It Right" warning that the current oil spill prevention and response measures leave the coastlines of Sakhalin and Hokkaido vulnerable to a catastrophic spill.⁸ The report recommended 78 specific measures, but SEIC hasn't implemented most of them.

Human Rights

Saffron cod and herring stocks are a key food source for the native Nivkh peoples. As the *Wall Street Journal* report indicates, local fishermen report that "[i]n 1999, the first year of commercial oil production, herring by the thousands washed

up dead on local beaches, and local schools of saffron cod have since shrunk dramatically."⁹

These collapses have particularly negative impacts on native inhabitants, who depend on fish as a basis of their economy and traditional culture.

Financial

Sakhalin II project sponsors originally indicated that the first phase of Sakhalin II would yield profit, yet official project documents for the second phase of the Sakhalin II project now state that "economic analysis shows that Phase I by itself will not be profitable."¹⁰ SEIC further admits that a proposed second phase of the project will only be profitable if, in addition to the oil, they are able to sell a minimum of nine million tons of gas annually. News reports indicate that, despite years of efforts, the project sponsors have been unable to conclude contracts for the sale of gas.¹¹ Hence, project sponsors' previous representation of project's financial health has been inaccurate and ECAs' requirement that project sponsors prove credit-worthiness has not been met.

Worse, economic benefits to Russia are in question. EBRD's Establishing Agreement directs the Bank to give support to sound and economically viable projects.¹² But according to a report of the Auditing Chamber of the Russian Federation (March, 2000),¹³ the project has had no economic benefit for the budget of Russia. According to this report, due to provisions in the Production Sharing Agreement, project sponsors will pay US\$ 19 billion less in taxes than they otherwise would have over the life of the project under normal contracting procedures. As such, Sakhalin II fails to meet this international standard.

Disclosure and public consultation

Despite repeated promises by project sponsors for ongoing consultation and access to information, consultation has been inadequate, and in 2002 NGOs were compelled to file a lawsuit against the Russian government and project sponsors to obtain public-interest information about this project. On January 8, 2003, 50 environmental organizations from Russia, the U.S., Japan, and Europe sent written common demands to Shell and other project sponsor, other area operators, government agencies, international financial institutions and company shareholders.¹⁴ These organizations demand that the project proponents use the best available technology, meet the highest international environmental standards and comply with Russian law. Until they are met, Sakhalin II

and other Sakhalin projects should not be allowed to move forward, they argue. SEIC has refused to meet these conditions.

Violations of host country law and treaties

Russian law forbids carrying out any work that negatively impacts an endangered species.

However, the Russian government has been slow to enforce these laws, and the big oil companies are taking advantage of this legal vacuum.

The indigenous Nivkh peoples' food source, livelihoods and traditional way of life are being threatened by this project. Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that all people have the right to adequate food. Russia ratified the ICESCR in 1976. Any government program that jeopardizes people's access to adequate food constitutes a direct violation of Russia's treaty obligations. Russia has also ratified the International Convention on the Elimination of all Forms of Racial Discrimination (March 6, 1969), which prohibits any action which harms ethnic minorities. Since the project's impact on fish stock have a disproportionate impact on the Nivkh people, this constitutes a form of government-sanctioned discrimination. Thus, the project leads to violations of two international treaties.

Shell and other project sponsors have worked actively to weaken Russian environmental standards. The *Wall Street Journal* report detailed how oil company-funded research led to the downgrading of the area fisheries classification, clearing the way for Sakhalin 2 to dump drilling wastes into the seas, which had theretofore been illegal under Russian law. The *Wall Street Journal* article quotes a chief Russian fisheries authority as saying, "I don't believe we can get an objective opinion from scientists who are dependent on companies."¹⁵

A federal court's ruling to block Exxon Mobil from dumping drilling mud at the Sakhalin I project didn't apply to the Shell-led consortium because it had a Production Sharing Agreement with the Russian government, according to the Sakhalin Environment Watch group.¹⁶ Thus, Shell and other project sponsors' bilateral investment agreement with Russia superseded host country law and this court ruling.

In 2001 Russian NGOs filed an environmental lawsuit against the Russian government to halt any construction or industrial development in the defined Gray Whale habitat area, naming Sakhalin Energy Investment Company, Ltd. as a third party

defendant. Russian law clearly prohibits harm to the habitat of listed endangered species such as the Sakhalin Taimen, a salmonid species threatened by the proposed 800 kilometer pipeline.

OECD Common Approaches Rev 6

Sakhalin II is under active consideration by as many as six ECAs, despite clear evidence that it should not be approved under the OECD Draft Recommendation for Common Approaches on Environment and Officially Supported Export Credits: Revision 6 of December 2001:

- It involves a project in a sensitive sector and area; negatively impacting the habitat for a critically endangered species, and of crucial importance to an ethnic group, the indigenous Nivkh peoples. Yet, it fails to even approximate international standards for the industry and World Bank Group standards and safeguard policies regarding the oil and gas sector, natural habitats, and indigenous peoples. Compliance with these international standards should be implicit under the Revision 6 benchmarking recommendations for environmental review;
- It violates host government law on endangered species and international treaty obligations regarding indigenous peoples' right to adequate food and freedom from racial discrimination. Compliance with host country standards is an approval criteria under Revision 6 provisions;
- Project proponents have failed to consult with project-affected populations as suggested by Revision 6

While the earlier phase of Sakhalin II was approved prior to Rev 6, the current phase should be held to the provisions of the Common Approaches, weak and voluntary as they are. Thus, the voluntary nature of Revision 6 could fail halt this project and prevent irreparable harm to critical habitats, indigenous peoples and endangered species. This case has been forwarded to the European Court for Human Rights.

Conclusion

As currently designed and operated, Sakhalin II poses a major and unacceptable hazard from its platform dredging, undersea pipeline through endangered Western Pacific Gray Whale feeding grounds, on-land pipelines trenched through wild salmon-bearing streams and crossing 24 seismic

fault lines, the continuous dumping of wastes into the sea and the Gulf of Aniva, and potential catastrophic oil spills into this delicate terrestrial and marine environment. Sakhalin II presents these risks without adhering to internationally accepted safeguards and inadequate consultation with project-affected peoples.

Sakhalin II meets neither the Draft Recommendation for Common Approaches on Environment and Officially Supported Export Credits: Revision 6, nor the environmental policies of the specific ECAs currently considering the project.

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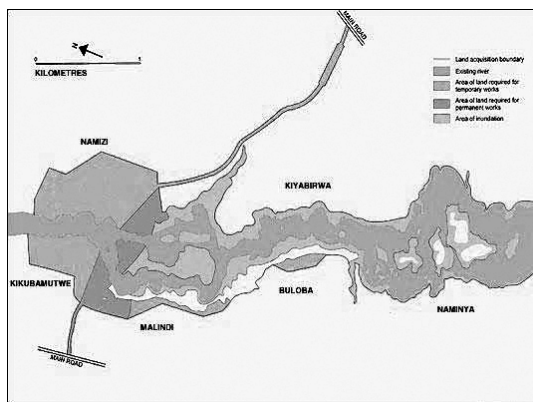
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Uganda – Bujagali Dam

Project Summary

This US\$530 million hydropower project – the largest private development in East Africa – could become a white elephant for Uganda's taxpayers and increase the nation's unsustainable debt burden, while also drowning the culturally important and beautiful Bujagali Falls. The US-based AES Corporation was contracted by the Ugandan government in 1994 to build the project and sell its electricity over a 30-year period – a contract which has been found by an independent financial analysis of the document to be highly unfavorable to Uganda. Although 95% of the Ugandan population does not have access to electricity, most could not afford this dam's costly power even if they were offered free connections to the national grid.

On August 8, 2003, lead project proponent AES decided to pull out of the Bujagali project, writing off its \$75 million invested to date. The government of Uganda remains determined to go forward with the project, going as far as proposing to raid the National Social Security Fund to keep the project afloat. The IFC and the World Bank are working with Uganda to fund a new public-private partnership for the project. Prior to this announcement, the project was being



Bujagali Dam Land-Take map
Graphic: Bujagali Hydro Project Web site

Human Rights and Environmental Issues:

- Forced resettlement with inadequate compensation
- Failure to assess cumulative impacts and downstream fisheries and agricultural impacts, potentially affecting 6,000 people
- Project contract is unfavorable to Uganda, a HIPC country, and could increase debt
- Alleged corruption by project proponent's contractors

Population and Sensitive Areas Affected:

820 villagers to be displaced and 6,000 local residents affected by changes to river

ECA's Potentially Involved:

- Finnvera (Finland)
- ERG (Switzerland)
- GEIK (Norway)
- EKN (Sweden)
- MIGA (World Bank Group)

Status:

Construction halted due to corruption charges and ongoing investigations. Lead project proponent AES withdrew in August 2003, though Uganda and the World Bank Group remain committed to the project.

considered by the World Bank Group's IFC and MIGA, Finland's Finnvera, the Swiss ECA Geschäftsstelle für die Exportrisikogarantie (ERG) and possibly Sweden's Exportkreditnämnden (EKN) and Norway's Guarantee Institute for Export Credits (GEIK).

Project Description

Bujagali Dam is a 200-megawatt hydropower project proposed for the Nile River at Bujagali Falls, near Lake Victoria. The dam is projected to cost US\$530 million. A transmission system is a separate component with its own impacts and costs. The project has been on hold since 2002 due to corruption allegations, but the Government of Uganda, the World Bank and the AES Corporation had expressed interest in going ahead

with the project if it is cleared by the anti-corruption investigations. In the statement announcing its withdrawal, AES says it had been cooperating with the US Justice Department regarding alleged violations of the US Foreign Corrupt Practices Act.¹

An analysis of the project's Power Purchase Agreement (PPA) prepared by the independent Prayas Energy Group of India demonstrated that this key agreement falls short of international standards. As a result, Uganda will be faced with an average \$20 million in excessive payments each year if the dam moves forward under this contract.²

Three powerful project proponents have pushed the project forward to this point, despite unresolved questions on its environmental, economic and social impacts: the US-based AES Corporation, Uganda's President Museveni, and the World Bank.

In December 2001, the World Bank Group approved approximately US\$215 million in support for the dam, hoping to make the project a showcase for private investment in Africa. An investigation by the World Bank Inspection Panel concluded in May 2002 that the Bujagali project violated five World Bank policies, including the policies on involuntary resettlement, environmental assessment, and disclosure of information.³ Despite this, the Bank later put forth a US\$215 million political risk guarantee through its insurer MIGA. The final World Bank Board vote on this has been put on hold pending the outcome of corruption investigations.

Non-governmental organizations, including Uganda's National Association of Professional Environmentalists (NAPE) International Rivers Network (IRN), the Bank Information Center (BIC), FIVAS and others in Europe, have for years criticized the project's lack of transparency and accountability. They have also exposed serious economic, social and environmental problems. Specifically, NGOs pointed out that no alternatives to Bujagali were ever seriously considered, that the contract was not



Bujagali Falls is an important cultural and spiritual site for the Bujagali, and revered for its natural beauty
Photo: www.harpatkaot.com

awarded based on competitive bidding, and that the World Bank's economic analysis of the project was over-optimistic and contradictory in important aspects.

Uganda has promising potential to develop geothermal energy. Neighboring Kenya has exploited its geothermal reserves at a lower cost and with far fewer impacts than the Bujagali project. In documents to justify Bujagali, the World Bank dismissed the nation's geothermal potential despite the fact that their own research shows that Uganda has excellent geothermal power reserves. In 1997, the Bank promised the government that it would support the next dam on the Nile, in return for a liberalization of the power sector, without assessing any other options.⁴

ECA Support

ECAs from Finland, Norway, Sweden and Switzerland and the Dutch development finance institution, FMO, had initially approved funding for the project. As of July 2003, the Norwegian and Swedish ECAs had reportedly canceled their support, after the Swedish and Norwegian firms that were to head up the construction consortium pulled out of the project.

The involvement of the World Bank's MIGA came after several ECAs expressed concern with the project's risk and appeared poised to withdraw support. World Bank board meeting notes from February 2002 state that the Swedish ECA concluded that Uganda posed "too high a risk" and therefore withdrew its \$112 million in planned financing.⁵ The prospect of MIGA providing political risk insurance has therefore helped keep the project alive. It is worth noting that the MIGA guarantee does not make the project any more viable, and would not alleviate the risk of further indebtedness for Uganda.

In July 2001, the ECAs of OECD countries agreed on principles to avoid unproductive expenditures in Highly Indebted Poor Countries (HIPC) countries. Bujagali continues to be a test case for ECA commitment to the OECD

principles on unproductive expenditures.⁶

Other funders that have rejected Bujagali as too economically or environmentally risky in recent years include Germany's DEG, France's Proparco, and the US OPIC. The status of ECA backing in the wake of AES' withdrawal is undetermined.

Impacts

Environmental Impacts

The proposed dam site is a few kilometers below two other large dam projects. Environmental harm goes beyond that of these three dams, since, according to the World Bank's Project Information Document, Bujagali is expected to "catalyze" further hydro development along the Nile. The Ugandan government has said it hopes to build up to six more dams on the Nile. Cumulative impacts of Bujagali and the two existing dams have not been assessed, and the existing dams did not have an EIA or subsequent monitoring. Failure to assess cumulative impacts violates the World Bank's EIA policy, as confirmed by the Bank's Inspection Panel. It also contravenes paragraph 10 of the OECD Common Approaches on Environment and Officially Supported Export Credits: Revision 6, of December 2001, which calls for analyzing "current and proposed development activities within the project area but not directly connected to the project," or cumulative impacts, in other words.

The project will drown Bujagali Falls, a national treasure and cultural icon. The "Source of the Nile" corridor is one of the most spectacular river stretches in the world, say whitewater rafting professionals, who use the stretch to be submerged by the dam for revenue-generating adventure tourism. Tourism is a larger earner of foreign exchange than everything but coffee in Uganda, and local tourism experts believe the Nile could become as big a draw as the Zambezi River in Zimbabwe and Zambia, which is a multi-million dollar business.

The project will permanently submerge highly productive agricultural land as well as islands supporting valuable natural habitats. The changes to the river could permanently harm fisheries, and possibly send some species toward extinction. The Environmental Impact Assessment conducted by AES failed to adequately assess downstream fisheries, ignoring some species, making it difficult to fully quantify the potential impacts.⁷

Human Rights Impacts

The dam and reservoir alone will permanently displace about 820 people, and affect about 6,000 more. The transmission lines' right-of-way may affect many more. AES claims that the project is a "model case" of successful resettlement.

However, a group of villagers who have already been resettled when groundbreaking and road construction began, have complained that they never received the full compensation they were due. They say the land they received is poor and stony. Drinking water is scarce, and toilets tend to overflow. People have lost their access to markets and firewood in the vicinity, and to the Nile for fishing. They have been barred from using common land for cultivating crops, and there is no area for grazing livestock. Breaking earlier promises, the project authorities have not moved their ancestral graves. "If we could, we would return to our earlier villages running," says one displaced villager.⁸



Bujagali woman
Photo: Ventana Pictures

Financial Viability

Uganda's payments to AES would have exceeded the debt relief Uganda has received under the Heavily Indebted Poor Countries (HIPC) Initiative. Furthermore, Uganda has suffered from low commodity prices, and even with this debt relief, a recent IMF/World Bank report admits that Uganda's debt sustainability outlook is "worrisome" and requires a major improvement in export performance and increased donor support. Yet this project would put huge financial burdens on the government, further exacerbating the debt problem.

AES had for over a year been experiencing serious financial difficulties, which further highlight the concerns over the project's financial

viability. (According to press reports, the Swedish firm Skanska pulled out of the project in June in part because it had not received payments from AES for over a year.)⁹ As the project's "bankability" has sunk with AES' fortunes, wilder schemes have surfaced to keep the project afloat. Recently, the Ugandan Energy Ministry proposed dipping into the nation's social security fund to obtain US\$10 million and help finance the project, a plan rejected by the Ugandan Parliament on Aug. 8, 2003.

The project's economic viability analysis, carried out by the World Bank, is based on over-optimistic macroeconomic assumptions, such as unrealistic GDP and income from coffee exports, as well as inflated figures for increasing demand for electricity. As the World Bank's excessively optimistic projections for export income now undermine Uganda's debt sustainability, so too could faulty assumptions about Bujagali's financial viability threaten the Ugandan economy.

The project will result in the loss of a significant source of foreign currency for Uganda. Rafting in the Bujagali Falls area is already the biggest draw for foreign tourists in Uganda, and tourism is the second largest source of foreign exchange in Uganda. According to rafting companies in Uganda, over 6,000 people raft the Nile each year near Bujagali, spending nearly \$4 million in Uganda on activities not related to rafting.

Finally, the project's Power Purchase Agreement (PPA) would have delivered a sweetheart deal for AES, which could have been a significant burden on Uganda. The Ugandan government had pledged to pay AES for electricity for 30 years, regardless of whether the project actually yielded the amount of promised electricity or whether all the electricity produced could be sold. According to various sources, including the report of the Inspection Panel, local politicians, independent economists and others, it is likely that the dam's tariffs will be unaffordable – at least for some years – to most Ugandans. Uganda citizens would still have borne the burden of meeting the government's financial obligations to AES.



Bujagali Falls is a popular destination for adventure tourism
Photo: www.rafting.co.ug

Disclosure and public consultation

The project has been marked by a lack of transparency. Numerous requests from Ugandan civil society groups to review the PPA were denied, and the document was kept confidential. In November 2002, a Ugandan court finally mandated the release of the document to the public. The PPA was reviewed by Prayas Energy Group, and the results were given to the Ugandan government, the World Bank and others. Prior to AES' withdrawal, the Ugandan government had been asking for a new PPA, citing the Prayas review as proof that the previous PPA was unfair. If a new company is brought in to build the project, a new PPA will be necessary, again raising issues of transparency and fairness.

Violations of Host Country Law and International Standards

When the World Bank first approved the Bujagali project in December 2001, Uganda was ranked the third-most corrupt country by Transparency International's corruption perception index. In spite of this, the project went ahead without full competitive bidding. In 2002, the project's main civil contractor admitted to having bribed Uganda's former Minister of Energy. The project was suspended by the World Bank and ECAs, pending the conclusion of corruption investigations. The contractor eventually withdrew for financial reasons caused by the delays.

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While this highly controversial project is on hold, and now with an uncertain future as to a possible replacement for the lead project proponent, the fact that any ECAs are considering it at all demonstrates that the non-binding OECD guidelines for environmental review are woefully inadequate. AES's Environmental Impact Assessment failed to consider the development context of two other dams just kilometers upstream of Bujagali on the Nile, which will potentially generate significant cumulative impacts. There was insufficient baseline analysis of existing fish populations to assess, much less mitigate, impacts on downstream fisheries and

people dependent on the Nile's waters for farming and fishing. The project subcontractors have clearly violated host country corruption laws. Problems with the early resettlement of 30 families confirm NGO concerns that the project's resettlement plans are inadequate, and little has been done to resolve these problems since the project is on hold. On these grounds alone, this project should not be under consideration by export credit agencies.

It is telling that a World Bank Inspection Panel review, and investigations by US, British, and Ugandan authorities were required to halt further work on this project. The fact that the Common Approaches are non-binding and that ECAs have no obligation to make environmental assessments and PPAs public has meant that patently bad projects can be considered and potentially supported, flaunting any OECD mandate for supporting sustainable development.

Conclusion and Recommendations

The Bujagali project, including the project's PPA, is fundamentally flawed and not in the best interests of the Ugandan people. Regardless of what happens going forward, significant changes need to be made:

- The World Bank and ECAs should cancel their funding of the project under their requirements that such an economically unfavorable project is likely to further exacerbate HIPC country indebtedness. Until it can be shown that the project's PPA is beneficial to Uganda, Bujagali has to be considered an unproductive investment.
- Just compensation must be provided to the displaced villagers whose lives and livelihoods have already been significantly harmed.
- A balanced and participatory process should be launched immediately to assess all available options to bridge the gap between Uganda's energy needs and supply, including the promising potential of geothermal power.
- Transparency and accountability are basic preconditions of good governance and sound economic development. The review of the PPA by Prayas Energy Group demonstrates that this rule should also apply to Power Purchase Agreements. Governments should no longer negotiate expensive long-term contracts without public debate and scrutiny,

and financial institutions should not fund future power projects based on confidential PPAs.

- Corruption remains a serious concern. Export Credit Agencies should not support any projects, which are not based on full competitive bidding.

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Jakarta Declaration for the Reform of Official Export Credit and Investment Insurance Agencies

Introduction

Non-governmental organizations around the world call the attention of governments and international institutions to the mounting adverse environmental, social, human rights and economic consequences of ECA activities. We have directly witnessed the unconscionable human suffering and environmental devastation that ECAs have produced in Indonesia, which is only one of many country examples. ECAs have supported many projects-e.g. in the mining, pulp and paper, oil and power sectors-which have had devastating social and environmental impacts. ECAs have supported the export of arms used for human rights abuses by the Suharto government. In 1996, ECA exposure in Indonesia was \$28 billion, an amount equivalent to 24% of Indonesia's external debt. The Indonesian ECA debt places an unacceptable burden on the Indonesian people, crippling their future development. As a 22 September 1999 "Financial Times" article pointed out, careless industrialized country export credit agencies share a major responsibility for "violence in East Timor and economic disaster in Indonesia."

Official Export Credit and Investment Insurance Agencies have become the largest source of public international finance, supporting in 1998 over eight percent of world exports. In 1998 ECAs supported \$391 billion in private sector business and investment, of which \$60 billion was for middle- and long-term guarantees and loans, mainly supporting large-scale project finance in developing countries. This exceeds all bilateral and multilateral development assistance combined, which has averaged some \$50 billion over the past decade. ECAs account for 24 percent of all developing country debt, and 56 percent of the debt owed to official governmental agencies.

In April, 1998 163 NGOs from 46 countries sent to the finance and foreign ministries of the major industrialized OECD countries a "Call of National and International Non-Governmental

Agencies for the Reform of Export Credit and Investment Insurance Agencies." The NGOs called for transparency in ECA decision making, environmental assessment and screening of ECA financial commitments, including participation of affected populations, social sustainability (equity and human rights concerns) in appraisal of ECA commitments, and for an international agreement in the OECD and/or G8 on common environmental and social standards for ECAs.

Over the past two years the major industrialized countries have only made the minimal commitment to work towards common environmental approaches and guidelines in the OECD. The lack of transparency and meaningful public consultation in the OECD Working Party on Export Credits and Credit Guarantees, particularly the lack of any consultation with representatives of affected groups and organizations from non-OECD recipient countries, has rendered this process a travesty. ECAs have consistently learned no lessons from the past and continue to approve financing for environmentally and socially destructive operations.

The social and environmental negligence, support for human rights violations, and lack of transparency of ECAs must come to a halt. ECA financing for major arms transactions, for obsolete technologies rejected or illegal in their home countries, and for economically unproductive investments is a scandal of global proportions.

Call for Reform

Based on the experiences of Indonesia and many other countries, NGOs from around the world reiterate the April, 1998 international Call for Reform of Export Credit and Investment Insurance Agencies. We call upon OECD governments, ministers and national legislatures to undertake with due dispatch the following reform measures for their ECAs:

1. Transparency, public access to information and consultation with civil society and affected people in both OECD and recipient countries at three levels: in the assessment of ongoing and future investments and projects

supported by individual ECAs; in the preparation within national ECAs of new procedures and standards; and in the negotiation within the OECD and other fora of common approaches and guidelines.

2. Binding common environmental and social guidelines and standards no lower and less rigorous than existing international procedures and standards for public international finance such as those of the World Bank Group and OECD Development Assistance Committee. These guidelines and standards need to be coherent with other ongoing international social and environmental commitments and treaties, for example, the conventions of the International Labor Organization and the United Nations Convention on Biological Diversity. In addition ECAs must conduct full, transparent accounting for climate change impacts and move to increase investments in sustainable renewable energy. So far, some governments have established, or are establishing, environmental and social policies which substantially deviate from, and are below these internationally recognized standards and guidelines.
3. The adoption of explicit human rights criteria guiding the operations of ECAs. This should be done in consultation with affected people and civil society, and based on existing regional and international human rights conventions. In Indonesia and elsewhere ECAs have not only supported arms exports directly linked to egregious human rights abuses, their support for mining, paper and pulp mills and other major infrastructure investments often has been accompanied by destruction of indigenous and local peoples' rights to land and livelihood resources, armed suppression of dissent, and suppression of press freedom to criticize such abuses.
4. The adoption of binding criteria and guidelines to end ECAs' abetting of corruption. According to Transparency International, the continued lack of action by ECAs to address this issue is bringing some ECA practices "close to complicity with a criminal offense." We endorse the recommendations of Transparency International submitted to the OECD and European Union in September, 1999, on how ECAs should avoid continued complicity in corruption. These include, inter alia, recommendations that export credit applicants must state in writing that no illegal

payments related to a contract were made, and that any contravention of the ban on illegal payment should entail cancellation of the state's obligation to pay. Companies found guilty of corruption should be banned from further support for five years, and export credit agencies should not underwrite commissions as part of the contracts they support.

5. ECAs must cease financing non-productive investments. The massive ECA support for military purchases and white elephant projects, such as nuclear power plants, that would be rejected by OECD bilateral aid agencies and multilateral development agencies such as the World Bank must end.
6. The cancellation of ECA debt for the poorest countries, much of which has been incurred for economically unproductive purposes. We support the call of the Indonesian anti-debt coalition for the cancellation of Indonesian ECA obligations, now placing an insupportable burden on the Indonesian people.

Conclusion

The OECD Development Assistance Committee declared in 1996 that "we should aim for nothing less than to assure that the entire range of relevant industrialized country policies are consistent with and do not undermine development objectives." The OECD ECAs, and the OECD Export Credit Working Party, completely disrespect this call. These ECAs have so far refused to accept any responsibility for their past mistakes, and to draw any meaningful lessons from them. The current practices of the ECAs embody a form of corrupt, untransparent, environmentally and socially destructive globalization as serious and reprehensible as the concerns raised by civil society and activists around the world about the World Trade Organization, the proposed Multilateral Agreement on Investment, and the International Monetary Fund and World Bank.

We call upon concerned citizens and organizations around the world to turn their attention to ECAs and their negotiating forum, the OECD, and to press their governments to undertake reform without further delay.

Signed by 347 NGOs from 45 countries. See www.eca-watch.org for a full list.

Race to the Bottom, Take II

An Assessment of Sustainable Development Achievements
of ECA-Supported Projects Two Years After
OECD Common Approaches Rev 6

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