

Chapter 23

The Institutionalized Use of Force in Economic Development: With special reference to the World Bank

Robert Goodland, Ph.D. (Environmental Sciences)

The World Bank Group's Chief Environmental Advisor,
1978-2001

Washington DC, USA

*Contact Information: 613 Rivercrest, McLean VA 22101(USA)
Phone: +1 703 356 2189; Email: RbtGoodland@aol.com*

Summary

Many economic development projects depend on the displacement of people from their homes and land to make way for large-scale projects such as highways, land colonization, irrigation schemes and hydro reservoirs. Such projects often result in trauma to the affected communities.

There are two contrasting types of involuntary displacement: first, urban displacement, and second, rural displacement.

Urban displacement often has less of impact because, while people are forcibly removed from their dwellings, their jobs, their markets, and their support groups, their society and relationships remain relatively intact, and they usually find another dwelling in a nearby street. Traumatic and harmful as urban displacement often is, it is not the focus of this chapter.

Rural displacement, our focus in this chapter, shatters the family from its resource base, confiscates land and farms, smashes informal relationships and support groups, ruptures market links, and precludes the informal gathering of forest products, fish and aquatic resources, as well as medicinal substances.

Development agencies openly accept the use of force as a normal tool, not merely tolerated, but considered inevitable. However, routine reliance on force has become unacceptable, and should be prohibited in economic development projects. Readily available alternatives, such as "Prior Fully Informed Consent," must become the norm.

Introduction

Force, violence and other human rights abuses are widespread in economic development projects in developing countries. (Westra, 2004) Many projects depend on the local military or mercenaries to protect corporate investments and property. Too often, however, security forces deteriorate into enforcers of illegal policies, such as repression, intimidation and suppression of dissent.

The major asymmetry of power between the impacted poor and the multinational corporations promoting their project is intensified when development agencies side with corporations against impacted people, such as by banning trade unions, freedom of association, and collective bargaining. This is especially common in extractive industry projects (e.g., oil, gas, and mining).

Currently, the World Bank Group (WBG) is revamping mining codes worldwide in order to become “industry friendly,” which intensifies impact on the poor. (EIR, 2003; Colchester *et al.*, 2003) This reduction of normal freedoms stems from the indirect use of force to promote economic development. Two main categories of force are seen in economic development, and they are intensifying.

First, violence has been used to impose the will of developers. Casual beatings and unjustified arrests are the most common types of force used to make people compliant with planned developments. The most thorough source for the documentary evidence of the use of force in general is in the Human Rights Watch’s World Report. (HRW, 2007)

Second, violence is used to displace people to make way for development projects. (Goodland, 2007a, b) This is the present chapter’s focus because the practice appears to have become institutionalized. Some development officials may consider the use of force as somewhat regrettable, yet necessary. Yet, such agencies are not seeking to end this systematic reliance on force as a tool in economic development. In fact, forced resettlement is likely to increase as population rises in developing countries.

More than 10 million people are involuntarily displaced (i.e., are ousted, hence are “oustees”) every year to make room for development projects. Their trauma and impoverishment violate human rights. As opencast mining, highways, reservoirs and agribusiness burgeon, the numbers of humans ousted are expected to soar. (Ali, 2003; Moody, 1992; Slack, 2004; Thakkur, 2004; WCD, 2000; WWF, 2004) The WBG’s review of involuntary resettlement in WBG-assisted projects between 1986 and 1993 found that only one project had satisfactorily compensated and rehabilitated affected people. (World Bank, 1996) Yet the policy (OP, 4.30) on Involuntary Resettlement was weakened in 2002. Consequently, the WBG’s response to impoverishing some two million people was to lower Bank standards. (McDowell and Van Hear, 2006; Downing, 2002)

Compensation is often withheld or is grossly inadequate. Cernea (2003) details the reasons why compensation has failed. For these reasons, rural, forced displacement usually fails, thus intensifying poverty. The poor are suddenly evicted from their lands and dwellings, and many end up in temporary refugee-

type camps, often for years or even permanently. Where there is a resettlement plan, it usually fails to restore pre-move standards of living. It is exceedingly rare for displaced people to regain their previous livelihoods after their relocation. A tiny proportion of ousted people regain previous standards, but only after years at lower standards. This is probably the worst feature of economic development today. Involuntary rural displacement means that the poor subsidize the proponent who externalizes resettlement costs onto the impacted people. Impoverishing displaced people is the most pervasive type of force in economic development.

Text Box 23.1. Four Examples of Violence in Economic Development

1. **Brazil:** In March 2001, three hundred protesters from the Tractebel and International Development Bank (IDB)-financed Cana Brava dam (Tocantins, Goias) were beaten by military police and denied access to drinking water (and food) for three days. Despite this incident, the IDB awarded itself the “Best project team” for “outstanding work with civil society” in October 2001. The reservoir filled in 2002. IDB’s official enquiry in 2004 added only twenty-four families for compensation.
2. **Indonesia:** Human Rights Commission (1994) the army around Freeport-McMoran’s mine had killed an estimated two thousand people, mostly ethnic minorities. After this, the mining corporation severed all ties with the World Bank and the Overseas Private Investment Corporation of the US Government in order to stifle an official enquiry.
3. **India:** Narmada Hydro and Irrigation program: Human Rights Watch (2007) “Thousands of arbitrary arrests, beatings, illegal detention, and other forms of physical abuse”. Hundreds of protesters were beaten and arrested by police in Gujarat, Madhya Pradesh and Maharastra on several different occasions between 1990 and 1993 when India cancelled the World Bank loan in order to reduce scrutiny.
4. **India:** Orissa: Utkal Bauxite Mine: Many Adivasis (ethnic minorities) shot, intimidated, raped or maimed by police at several massacres in the last few years to make way for the bauxite mine (Goodland, 2007b)
5. **Senegal:** Manantali Irrigation: Human Rights Watch (2007) “indiscriminate killings, detention, rape and beatings by security forces;” six hundred executed or tortured to death, sixty thousand people fled or were deported; tens of thousands were forcibly expelled from Mauritania. (McCully, 1996).
6. **Suriname:** Chinese Logging Corporations logged the forest and destroyed farms belonging to Maroons of the Saramaka Tribal People. The Army supported illegal Chinese Logging Corporations (Goodland, 2007a) (Sources: Human Rights Watch, Amnesty International)

The United Nations and Human Rights

Ironically, creation of the Bretton Woods twins in 1945 (i.e., the International Monetary Fund [IMF] and the World Bank [WB]) was closely connected to the

adoption of the Universal Declaration of Human Rights in 1948, but the two have since diverged. During the decade since the 1992 United Nations (UN) Rio Conference on Environment and Development, human rights arguments have been applied and tested to meet sustainable development goals in many national, regional and multilateral settings.

Since 1997, the UN Secretary General has consistently urged mainstreaming human rights across the UN system. Economic, social and cultural rights are now on a par with civil and political rights. The UN's 1998 Annual Report concluded that society has an obligation to respond to the inalienable rights of individuals and empower people to demand justice as a right, not as charity. Handl (1991, 2001) makes the case that rights-based development is becoming international customary law.

The Private Sector and Human Rights

Of course, Organization for Economic Co-operation and Development (OECD) countries would not countenance slavery and child labor at home; nor should they overseas. Corporations should follow the more important UN (e.g., ILO, IPEC, OECD, WBG) and other norms (see Text Box 23.1) all the time, especially in developing countries. Better mining corporations have incorporated the Universal Declaration of Human Rights into their own mandatory corporate codes of conduct. Extractive industry majors (e.g., Chevron-Texaco, Shell, Conoco, BP, RTZ, Freeport McMoran) have joined the Governments of the United States (USA), the United Kingdom, and the Netherlands in agreeing to the "Voluntary Principles on Security and Human Rights," which, since 2000, has sought to promote best human rights practices with respect to the use of security and other forces in extractive projects.

The WBG and Human Rights

The WBG's posture on human rights lags behind that of the UN family, and behind industry leaders. Until recently, the WBG emphasized that its articles prohibit the use of non-economic criteria in lending; hence human rights should not be used in lending decisions. This is progressing to cautious engagement in a few specifics.

As long ago as 1981, the WBG adopted the official policy on vulnerable ethnic minorities or indigenous peoples (Goodland, 1981), which is essentially a human rights issue. The WBG's General Counsel, Ibrahim Shihata, called the bank's policy on ethnic minorities a human rights policy; he started publishing on human rights issues from 1988. He ruled that: "balanced development can only be achieved if the basic human rights are secured for persons affected by development." Shihata came round to the opinion that human rights could be considered in Bank work when they crossed a threshold and became so important that they constituted an economic issue. (Shihata 1991, 1997)

Mention of human rights was practically taboo until recently. However, the 2006 World Development Report at least mentions human rights in passing. (World Bank, 2006) The day he retired, the WB's General Counsel published a legal opinion that human rights can be a legitimate criterion in WB work (Dañino, 2006). More than 190 countries have ratified the six main human rights conventions (HRW, 2007); the WBG has not.

From Participation to Consent

Community participation is part of the trust-building process necessary for developers to earn a social license to operate, and is a standard component of corporate social responsibility. Participation means gaining agreement on precautions, mitigation, and compensation. The distribution of benefits between the developer, local and central government, and affected communities is a central element of participation. The WBG now requires "meaningful" participation. It starts well before permitting and licensing, and it leads to public acceptance and consent.

Free Prior Informed Consent

"Informed Consent" derives from the principle of "Respect for Autonomy" which has been dominant in medical research since after World War II. It is a process that aims to secure from individuals, voluntary, prior, (usually written) informed consent before undergoing a medical procedure, or participating in medical research.

Not unlike it, the principle of "Free Prior Informed Consent" (FPIC) is a process that can be implemented to improve the social situation around economic development projects. While not a perfect process, FPIC is a preferable alternative to the use of force or imposing involuntary conditions on impacted people. FPIC provides potentially impacted communities with information about a proposed development project and encourages their consent. It begins with the provision of details on the nature of a proposed action, including the risks, benefits, and alternatives to the proposed action. FPIC protects community members by providing relevant information to them in order to make informed choices; it can also be used as a tool to help developers achieve a "social license" to operate.

The FPIC process can ensure that potentially affected communities have all the relevant information at their disposal in order to ensure balanced and fair negotiations with project proponents. Balanced negotiation requires the education of all stakeholders (i.e., governments, proponents, affected communities) with regard to their rights and responsibilities. Negotiation between asymmetrical parties usually requires the aid of advocates, facilitators and technical assistance.

FPIC means affected communities have to agree to a project prior to it being permitted. This belief began to take hold in the early 1980s, when there was the first international acceptance that displacement of people should not go ahead if the potentially affected communities found it unacceptable. Since then, this belief has been gradually strengthening. All displacement should be so attractive that it would be entered into voluntarily; “general acceptance” would be the norm.

When convenient, the WB claims that its work must be based on economic principles. If a project is not economic, the project should not go ahead as designed. The main principle of economics applied in this case is “willing seller/willing buyer.” If buyer or seller is unwilling, economics does not apply. In the unwilling case, the project descends into the use of force; economics is suspended. The WB sometimes says that it is prevented from fulfilling a clear desire or standard “because it is not economic,” and that its Articles of Agreement prohibit the use of non-economic factors. If the WB wants to comply with its Articles, it has to ensure willing seller/willing buyer. Rejecting FPIC means that the WB is rejecting standard economics and choosing coercion or force instead. This is unacceptable.

If they are willing to be displaced, oustees would become project beneficiaries. Any form of development that would require the use of force, being involuntary in any sense, or one that would increase poverty, would become unacceptable. Development must become consensual and democratic. A project is likely to fail if there is significant broad-based opposition. Development projects that depend on mass involuntary displacement, such as reservoirs in densely populated farmland, should be redesigned. Alternatively, development projects should achieve FPIC by guaranteeing benefits to the impacted communities through insurance, performance bonds, or escrowed trust funds.

In the mid-1990s, the WBG ruled that “meaningful” consultation must be interpreted as the possibility of the impacted community saying no. With this veto power comes the correlative power to negotiate on equal terms with the project proponent. This does not mean that a single obstinate family can cancel a project; eminent domain should remain available for such cases, as long as it is sparingly invoked. On June 4, 2004, the WBG accepted that it “. . . requires a process of free, prior, informed consultation. . . . that leads to the affected community’s broad acceptance of the project.” The WB realizes that the “consent” includes the right of a community to reject a proposed project, hence the weasel word “consultation” instead of “consent;” sadly, their August 2 legal ruling (World Bank, 2004b) fails to distinguish between consent and consultation.

FPIC helps the poor more than the rich, who usually are not forced into accepting potentially harmful actions, in part because the rich have more power. The poor tend to accept riskier jobs and unsafe labor conditions, and may provide consent more readily than the rich because of need. Therefore, FPIC is a necessary, but not sufficient, condition for a development project to be permitted.

Text Box 23.2. Eminent Domain: the Despotism Power

Eminent domain (ED) is designed to create government flexibility in the provision of public services, such as highways and bridges. ED is defined as the right of a government legally to seize, condemn, expropriate or confiscate private property for public use, in exchange for payment of the fair market value of the property, plus relocation expenses and payment for any consequential damages, including to tenants. ED may be invoked only when good faith negotiations have failed. In 1795, the US Supreme Court described ED as the 'Despotism power' because ED can be abused. The US Constitution and the US Supreme Court seek to limit such abuse by emphasizing first, that ED may be used strictly for 'public use', and not for private use such as offices, housing, casinos, or malls. Neither should ED be used in the case of public/private sector partnerships. And second, that compensation must be just, agreed upon by three independent arbiters, and subject to appeal in the courts. ED still is coercive in that if a household resists through the entire process of negotiations, arbitrations and appeals, it will eventually be evicted by bailiffs. The limited use of ED with households well versed in using money would be better than today's use of force. Certainly, the ED process would be far better than today's much more common involuntary displacement because the latter has no process of negotiation, arbitration and appeal. Dealing with individual households in general is less satisfactory than negotiating with the community as a whole as required for FPIC. (Berliner, 2003; Epstein, 1989; Kotoka and Cellies, 2002; Rypinski, 2002; Snyder, 2006).

One of the earliest formal codifications of FPIC was in the Nuremberg Code of 1947, concerning the conditions under which research and experimentation could be carried out on human beings. FPIC is still intensively discussed in the field of medical ethics.

The International Bill of Rights, International Covenant on Economic, Social and Cultural Rights, and International Covenant on Political and

Civil Rights all provide clearly for self-determination and free pursuit of people's own development. The OECD and UN system (e.g., ILO, FAO, GEF, UNEP, and WSSD) have been increasingly relying on FPIC. The UN Declaration on the Rights of Indigenous Peoples, and the InterAmerican Declaration on the Rights of Indigenous Peoples, explicitly recognize FPIC. The International Labor Organization (ILO) Convention 169 provides for prior informed consent in case of displacement. The UN Food and Agriculture Organization (FAO) Code of Conduct was amended in 1989 to make FPIC mandatory. The 1989 Basel Convention on Hazardous Wastes, the 2001 Stockholm Convention on Persistent Organic Pollutants, and the 2002 Convention on Biological Diversity, all contain strict FPIC requirements. The Rotterdam Convention on Prior Informed Consent was adopted in 1998. FPIC has long been a requirement for indigenous peoples potentially being impacted by a development project. (Athaly, 2003; Colchester, 2003; Goldzimer, 2000; Goodland, 2004; MacKay, 2004; Cellies *et al.*, 2003; FPP, 2004; Bosshard, 2004)

Listening to people who were usually harmed by development is a relatively new process. In the 1950s and 1960s, people about to be harmed by a project might be warned, but rarely helped. “Meaningful consultation” became mandatory in WBG-assisted projects in the late 1980s. Meaningful stakeholder participation became mandatory in 1992. The WBG’s Legal Department interpreted the term “meaningful” to mean that the communities being consulted had a right to say “no” to the proposal.

Text Box 23.3. Prior Consent and Australia’s Aboriginal Land Rights

The 1976 Act mandates prior consent, including the right to veto exploration on the lands of Australia’s Aboriginal population. The governor can override a community’s veto in cases of the national interest, but has not yet done so to date. Over the last twenty years, Aboriginal communities have vetoed at least 122 exploration license applications. The Act was weakened in 1987 so that consent for exploration sufficed if the proponent later decided to mine. In 1992, courts ruled that the Aboriginal Land Council could not require further consent, even if the mining corporation agreed to seek a second FPIC for mining, hence further weakened the Act. While the Act provides that state and federal royalties accrue to the Aboriginal Benefit Account, it does not insist on prior provision of adequate information. (Bass *et al.*, 2004)

Consultation and participation ring hollow if the potentially affected communities cannot say anything except “yes.” “Meaningful participation” if properly implemented can achieve FPIC. However, “meaningful participation” is open to various interpretations, depending on who is facilitating the participation. FPIC has been clearly operationalized by Mehta and Stankovitch (2000), MacKay 2004, and Bass *et al.* (2004) provides detailed case studies showing how FPIC has been approached in the case of mining projects.

FPIC is still not always accepted as a requirement for development projects:

- a. In 2000, the World Commission on Dams (WCD) called for FPIC to be applied to indigenous peoples involved in dam projects. WCD amplified adjudication procedures and did not mention veto. WCD’s recommendation was rejected by the WBG.
- b. A call for FPIC for non-indigenous peoples to be included in the 2001 revision of the WBG’s involuntary resettlement policy was similarly rejected by the WBG.
- c. In February 2003, the WBG announced its “high risk/high reward” policy of resuming financing for big infrastructure projects and a new water strategy paper emphasizing big dams, after a decade-long suspension. Civil Society responded with “Gambling with peoples lives: what the WB’s new ‘High Risk/High reward’ strategy means for the poor and the environment” (Bosshard *et al.*, 2003), urging the WBG to adopt FPIC.

- d. Commendably, FPIC is sought these days in some WBG projects, though it is not yet clearly mandated by WBG policies. (Colchester *et al.*, 2003; Goodland, 2005)
- e. The WBG's June 4, 2004 response to the Extractive Industry review stated that the WBG "... requires ... free prior informed consultation ... that leads to the affected communities' broad acceptance of the project."

Characteristics of Fully Informed Prior Consent

The main characteristics of fully informed prior consent (FPIC) are that it is: (1) freely given, (2) fully informed, (3) obtained before permission is granted to a proponent to proceed with the project, and (4) consensual.

"Freely-given" means that potentially affected people must freely offer their consent. Consent must be entirely voluntary; they must not be coerced or tricked into consent.

"Fully-informed" means that the affected people know and understand as much about their own rights and the implications of the proposed project as do the proponents in order to ensure balanced negotiation. This means two categories of information sharing. First, the vulnerable and weaker of the two sides must understand what their rights are, including their historic territorial rights, their rights to lands where they have been living for generations, and their rights of access to natural resources on which they depend, such as fish in the nearby river. Indigenous peoples have the right to determine the course and pace of their own development and the right to self-determination. Facilitating the process of FPIC is usually best done by neutral agents. This may preclude the WBG from acting as the facilitator for a FPIC process, because it usually has a vested interest in the positions of governments and corporations as much as in the rights of potentially affected peoples. (Colchester *et al.* 2003)

The second category of information concerns the nature of the project being contemplated by the proponent. Affected people must understand the potential harm and risks that might accrue if they accept the project. Worst-case scenarios and potential disasters need to be understood. In the experience of many indigenous peoples, it may be beyond their imagination and even beyond their vocabulary for a river to die. However, an industry can easily kill a river.

The possible death of a river, the sterilization of an area of ocean, or the irreversible removal of a tract of forest is not easy for many indigenous peoples to imagine. Even the damage from a rare and devastating forest fire, within living memory, or in oral history, is not irreversible. Regeneration restores many resources after a few decades. Showing a cartoon or video film of a similar project or accident elsewhere cannot be assumed sufficient to bring affected people up to speed for the "fully informed" comprehension criterion.

"Prior" means FPIC has to be obtained before permission is granted to the proponent to proceed with the proposed project that will affect the communities; this means well before a financing agency considers the request to finance the

project. FPIC is best achieved as part of the standard Environmental and Social Impact Assessment process. The impacts are predicted together, and their mitigation is also designed together.

“Consent” means harmonious, voluntary agreement with the measures designed to make the proposed project acceptable to the potentially affected communities. Tacit consent is avoided by the “fully informed” criterion: silence is not the consent required for FPIC.

FPIC does not demand absolute consensus: a significant majority suffices. A majority of fifty-one percent suffices in democratic elections, which may be used as a guide to the definition of a “significant majority.” If there is substantial opposition to the proposed project, FPIC becomes less achievable. Although there are no hard and fast rules about the fraction agreeing, the point is usually less important than it at first appears. Most societies discuss important issues together as a community, with leaders or representatives, and often for days on end, until the spirit of consensus is reached.

Text Box 23.4 Canada’s First Nations, FPIC, and Extractive Industries

In the early 1970s, Canada wanted to extract hydrocarbons from the Yukon and Mackenzie Valley, territories of Canada’s Indigenous People or “First Nations”. The 1974-1977 Royal Commission, headed by Supreme Court Judge Thomas R. Berger, sided with the First Nations’ rejection of the project because the likely impacts looked too severe, the offered benefits too meager, and the promises aspirational. Since then, political evolution and forceful legislation have improved protection for the First Nations and strengthened their bargaining power, partly by devolving control from Ottawa to the First Nations. The First Nations communities now have some ownership rights over both surface and sub-surface resources. In 2001 oil corporations and First Nations became partners with most of the potentially impacted First Nations negotiating a financial stake in the proposed pipeline. Now it seems as if the First Nations will provide FPIC. Pipeline planning began in earnest in 2003. It seems that the thirty-year delay has been justified. [ecolibertarian.com/2007/04/28/a-decades-delay-for-the-mackenzie-valley-pipeline].

In summary, FPIC requires that the affected communities must understand that they will benefit from the proposed project, and that these specific benefits will far exceed any worst-case scenario of unforeseen impacts. Affected communities must become convinced, organically and in their own way and time, that:

- prudent mechanisms are in place to guarantee their benefits,
- compensation will be just, and
- rehabilitation will ensure the communities are promptly and clearly better off with the project.

In addition, affected people must be seen to understand that they will be fully involved in legally enforceable monitoring to ensure compliance with whatever they are consenting to.

World Bank's Current Stance on Human Rights

Apart from the 1981 ethnic minority policy, IFC's 1997 adoption of two of ILO's core labor standards (child labor and slavery), and Shihata's publications up to 2000, the WBG fended off human rights. Attention to the relatively new issues of governance and corruption led the Bank to confront human rights from 2005. (Kaufmann, 2005; Dañino, 2006) The topic recently (2006) was added to the Frequently Asked Questions section of its official Web site. A human rights focal point, human rights unit, human rights trust fund, guidance to staff, or even a policy may be forthcoming within the organization.

1. The WBG now considers labor unions, collective bargaining and other civil liberties to be "economic," according to WBG's own research (e.g., Isham *et al.* 1997, Aidt and Tzannatos, 2003).
2. The International Court of Justice has ruled that the WBG's Articles of Agreement need to be interpreted in the context of contemporary law, in which human rights are of international concern, rather than political matters exclusively the purview of domestic governments.
3. WBG President Wolfensohn stated in 1999 that no equitable development is possible without protection of human rights.
4. A Human Rights Policy approach paper was discussed by WBG Executive Directors in 2003, but was rejected. Industrial country representatives were positive, but developing country representatives felt human rights could be misused as a form of trade protectionism.
5. IFC's Peter Woicke raised the need for a Safeguard Policy on Human Rights at least twice during the 2002-2004 independent Extractive Industries Review (EIR). (Goodland, 2003) In addition, he published his desire for a new, official, Human Rights Safeguard Policy both in the Financial Times, and again on Human Rights Day (December 10, 2003), and again at the March 2004 Human Rights and Development conference in New York.
6. Almost all WBG member countries have ratified human rights standards in international conventions. But, WBG's policies prohibit it from supporting violations of member countries' commitments to uphold international treaties, including human rights obligations. Shihata (1997, 1991-2000) ruled that obligations under the UN Charter (Article 103) prevail over the WBG's Articles of Agreement.
7. The WB's "Management Response" to the independent (World Bank, 2004a) rejected EIR's recommendations on FPIC and human rights, and even the two UN ILO Core Labor Standards that IFC had adopted in 1997. President Wolfensohn distanced himself from this response, and ordered a more positive re-think. The final 2004 response of the WBG to the EIR mandated "Prior In-

formed Consultation...and broad acceptance of the project by affected communities.”

8. The WB’s official legal note on FPIC (World Bank, 2004b) was emitted by: (a) the Senior Vice President and General Counsel of the WB, (b) the General Counsel of IFC, and (c) the Vice President and General Counsel of MIGA. Oddly, it fails to distinguish between “consultation” and “consent;” in practice, as of mid-2007, they are converging.

Conclusions and Recommendations

Several changes are called for in the way that development projects are undertaken:

1. Economic development should not rely on force. Coercion means people are being excluded and are forced to subsidize the developer.
2. The Bank should follow its Articles of Agreement and stick to standard economics. If willing seller/willing buyer is not upheld, force is used and economics does not apply.
3. FPIC should be required for all operations (e.g., displacement) involving indigenous and non-indigenous peoples, and all projects impacting communities.
4. Policies on displacement, resettlement, compensation, consultation, participation, disclosure and transparency should require that FPIC is the main criterion to be used as a social license to operate, hence as the main tool in deciding whether to permit a development operation once FPIC has been legitimately obtained.
5. Because genuine FPIC is difficult and time consuming to obtain, it is best sought by reputable, objective, and independent agents, rather than either by the proponent, the government, or by development agencies.
6. The conditions under which “Eminent Domain” is permissible need to be clarified, especially in resettlement. Eminent Domain must be used for public use only, not for private or corporate use.
7. Resettlement policy needs to be revamped as a matter of urgency, such that all people displaced become modestly better off promptly after their resettlement. Performance bonds, insurance, fractions of sales receipts, and escrow accounts should be used to guarantee that no oustee is worse off than before the project was identified.

Acknowledgments

I am most grateful for the useful comments of Professor Ted Scudder. Professor Colin Soskolne deserves more than acknowledgement for his superb editing without which this chapter would not have seen the light of day.

References

- Aidt, Toke, and Zafiris Tzannatos. *Unions and Collective Bargaining: Economic Effects in a Global Environment*. Washington DC., The World Bank, Publ. No. 24730: 2003.
- Ali, Salim. H. *Mining, the Environment and Indigenous Development Conflicts*. Tucson, AZ: University of Arizona Press, 2003.
- Alston, Philip, and Mary Robinson. *Human Rights and Development: Towards Mutual Reinforcement*. New York: Oxford University Press, 2005.
- Athialy, John. *Free Prior Informed Consent of Communities in Large Hydroprojects: The Case of the James Bay Projects*. Worcester, MA: Clark University, International Development, Community and Environment, 2003.
- Bass, Susan, Pooja Seth Parikh, Roman Czebiniak, and Meg Filbey. *Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities*. Washington, DC: Environmental Law Institute, 2004.
- Berliner, Dana. *Public Power, Private Gain: a Five-Year, State-by-State Report Examining the Abuse of Eminent Domain*. Arlington, VA: Institute for Justice, 2003. <http://CastleCoalition.org> (31 May 2007).
- Bosshard, Peter. *Free Prior Informed Consent: No Longer a Question of Omelettes and Eggs*. Berkeley, CA: International Rivers Network, 8 March presentation to the Berne Declaration, 2004.
- Bosshard, Peter, Janneke Bruil, Korinna Horta, Shannon Lawrence, and Carol Welch. *Gambling with people's lives: What the "High-Risk/High-Reward" Strategy Means for the Poor and the Environment*. Environment Defense, Friends of the Earth, International Rivers Network, 2003. <http://www.irn.org/programs/finance/pdf/030919.wbgambling.pdf> (31 May 2007)
- Callies, David L., Daniel Curtin, and Julie Tappendorf. *Bargaining for Development: A Handbook on Development Agreements, Annexation Agreements, Land Development Conditions, Vested Rights and the Provision of Public Facilities*. Washington, DC: Environmental Law Institute, 2003.
- Cernea, Mikhail. "For a New Economics of Resettlement: a Sociological Critique of the Compensation Principle." *International Social Science Journal* 1, no. 175 (2003): 37–46.
- Colchester, Marcus, Ann Loreto Tamayo, Raymundo Rovillos, and Emily Caruso, eds. *Extracting Promises: Indigenous Peoples, Extractive Industries and the World Bank*. Baguio City, Philippines: Tebtebba Foundation, 2003.
- Dañino, Roberto. *Legal Opinion on Human Rights and the Work of the World Bank*. 2006. <http://www.ifwatchnet.org/uploads/e66573a01f5e8e9cf2a1e942b0f4141a/DaninoLegalOpinion0106.pdf> (does not work, can't find new URL)
- Downing, Theodore. "Creating Poverty: The Flawed Economic Logic of the World Bank's Revised Resettlement Policy." *Forced Migration Review* 12 (2002).
- EIR, *The Independent Extractive Industries Review: Final Report to the World Bank Group (Dr. Emil Salim's Report)*. Jakarta and Washington, DC: EIR: 2003.
- Epstein, Richard A. *Takings: Private Property and the Power of Eminent Domain*. Cambridge MA: Harvard Univ. Press. 1985. (not referenced)
- Epstein, 1989 (reference page 7, wrong year in citation?).

- Forest Peoples Program, *Indigenous People's Right to Free, Prior and Informed Consent and the World Bank's Extractive Industry Review*. Moreton-in-the-Marsh, UK: (Fergus MacKay), Forest Peoples Program. 2004.
- Goldzimer, Aaron. *Prior informed consent of project affected indigenous peoples*. Boston, MA.: Harvard Master Thesis. 2000.
- Goodland, Robert. *Economic Development and Tribal Peoples: Human Ecological Considerations*. Washington, D.C: The World Bank, 1981.
- Goodland, Robert. *Sustainable Development Sourcebook for the World Bank's Independent Extractive Industries Review: Examining the Social and Environmental Impacts of Oil, Gas and Mining*. Washington, D.C: Extractive Industries Review [for the] World Bank Group. 2003.
- Goodland, Robert. "Free Prior Informed Consent and the World Bank." *Sustainable Development Law and Policy* IV, no. 2 (2004): 66–74.
- Goodland, Robert. "Strategic Environmental Assessment in the World Bank." *International Journal of Sustainable Development & World Ecology* 12 (2005): 1–11.
- Goodland, Robert. *Case of Twelve Saramaka Clans (Case 12.338) v. Suriname: Affidavit. Costa Rica, San José*. Inter-American Court of Human Rights: April 2007a..
- Goodland, Robert. *India: Utkal Bauxite Project: Human Rights and Environmental Impacts*. Washington, DC: 2007b. (in press).
- Handl, Günther. "Environmental Security and Global Change: The Challenge to International Law." *Environmental Protection and International Law*, edited by Winfried Lang et al. London: Graham & Trotman/Martinus Nijhoff, 1991.
- Handl, Günther. *Multilateral Development Banking: Environmental Principles and Concepts Reflecting General International Law and Public Policy*. The Hague, NDLDS: Kluwer Law International, 2001.
- Human Rights Watch. *World Report*. Washington, DC: HRW, 2007.
- Isham, Jonathan, Daniel Kaufman and Lant Pritchett.. "Civil Liberties, Democracy and Performance of Governments." *The World Bank Economic Review* 11. 1997.
- Kaufmann, Daniel. "Human Rights and Governance: The Empirical Challenge." *Human Rights and Development: Towards Mutual Reinforcement*, edited by Philip Alston, and Mary Robinson. New York: Oxford University Press, 2005.
- Kotaka, Tsuyoshi and David L. Childes. *Taking Land: Compulsory Purchase and Regulation in Asian-Pacific Countries*. Honolulu: University of Hawai'i Press, 2002.
- MacKay, Fergus. "Indigenous Peoples Right to Free, Prior and Informed Consent and the World Bank's Extractive Industry Review." *Sustainable Development Law and Policy* IV, no. 2 (2004): 43–65.
- McDowell, Christopher, and Nicholas Van Hear. *Catching Fire: Containing Forced Migration in a Volatile World*. Lanham, MD: Lexington, 2006.
- McCully, Patrick. *Silenced Rivers: The Ecology and Politics of Large Dams*. London: Zed Books, 1996.
- Mehta, Lyla, and Maria Stankovitch. "Operationalisation of Free Prior Informed Consent." *Institute of Development Studies (UK) [and] World Commission on Dams*, Contributing Paper. 2000.
- Moody, Richard. *The Gulliver File: Mines, People, Land: A Global Battleground*. London: Pluto Press, 1992.
- Rypinski, Richard G. *Eminent Domain: A Step-by-Step Guide to the Acquisition of Real Property*. Point Arena, CA: Solano Press, 2002.
- Shihata, Ibrahim F. I. *Complementary Reform: Essays on Legal, Judicial, and Other Institutional Reforms Supported by the World Bank*. The Hague, NDLDS: Kluwer Law International, 1997.

- Shihata, Ibrahim F. I *The World Bank in a Changing World*. Dordrecht, NDLDs: M. Nijhoff Publishers, 1991-2000.
- Snyder, David B. "Debate over What Justifies the Use of the Power of Eminent Domain." *Mortgage Banking* 66, no. 5 (2006): 66–71.
- Slack, Keith. "Sharing the Riches of the Earth: Democratizing Natural Resource-Led Development." *Carnegie Council on Ethics and International Affairs*. 2004.
- Thakkur, Hemanshu. "Lessons Unlearned? The Case of India's Allain Duhangan Dam and the World Bank." *World Rivers Review* 19, no. 1 (2004): 10–11.
- Westra, Laura. *Ecoviolence and the Law: Supranational Normative Foundations of Ecocrime*. Ardsley, NY: Transnational Publishers, 2004.
- World Bank. *Resettlement and Development: The Bankwide Review of Projects Involving Involuntary Resettlement 1986-1993*, 2nd edition. Washington, DC: The World Bank. (1994) 1996.
- World Bank. *Management Response to the Independent Extractive Industry Review*. Washington, DC: (Jan. 23), WBG, 2004a.
- World Bank. *Legal Note on Prior and Informed Consultation*. Washington, DC: The World Bank (Aug. 2), Three General Counsels. 2004b.
- World Bank. *Equity and Development*. Washington, DC: World Development Report, 2006.
- WCD. *Dams and Development: A New Framework for Decision-Making*. London: Earthscan, 2000.
- World Wildlife Fund. *Dam Right: WWF's Dams Initiative*. Gland, Switzerland: WWF Working Paper, 2004.