

OVERVIEW PAPER
**Japan Bank for International Cooperation (JBIC) Guidelines for Confirmation of
Environmental and Social Considerations: Its Implications on Indigenous Peoples**

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I. Institutional Review

The Japan Bank for International Cooperation, or JBIC, is the second largest development bank in the world. It was established in 1999 when two large Japanese financial institutions merged, the Japan Export-Import Bank (JEXIM) and the Overseas Economic Cooperation Fund (OECF).

OECF was mainly responsible for providing Yen Loans, one type of Official Development Assistance (ODA). According to the Japanese Government, the purpose of Yen Loans is to promote the economic development and welfare of developing countries. JEXIM did other kinds of International Financial Operations (IFOs) that were not ODA loans, such as export loans, import loans, investment loans, and untied loans. The purpose of IFOs is to support Japanese companies' exports and investments.

Because JBIC was established by putting these two institutions together, it now is responsible for both Yen Loans as well as the IFOs. JBIC therefore lends to governments of developing countries and also to Japanese and foreign companies.

JBIC finances projects worldwide. Most of the projects it finances, however, are in Asia. Of all Yen Loans, approximately 80% are given to countries in Asia. About 7% of Yen Loans are to countries in Africa, 6.5% to Latin and South America, 4.3% to the Middle East and 0.8% elsewhere (based on the data of FY 2002). As of the end of 2003, JBIC had outstanding loans of US\$192.3 Billion and annual lending of US \$17.7 billion. There are 40 countries receiving loans from JBIC.

JBIC has focused its financing on large-scale infrastructure projects. While some of these projects have contributed to the development of certain areas, a very significant number of its funded projects, particularly large infrastructure projects, have caused a lot of damage to the environment. These include air and water pollution, damaged ecosystems and the loss of biodiversity in many parts of the world. Affected people have also suffered significantly due to projects financed by JBIC. This has been due to involuntary resettlements, loss of livelihood and negative consequences on the socio-cultural life of the people. Destruction of ecosystems has also made living a traditional lifestyle impossible. It has divided communities and destroyed cultures. Compensation for damages to those adversely affected has not been sufficient and their lives have further deteriorated. Those who have suffered most from ill-conceived projects funded by JBIC are the poor, women, children, the elderly and indigenous peoples.

JBIC is largely funding projects in Asia where most indigenous peoples are found, thus, more and more indigenous peoples are adversely affected by JBIC-funded projects. Experience has shown the dire consequences of JBIC-funded projects on the recognition of the collective rights, interest and welfare of indigenous peoples. Indigenous peoples are time and again made to sacrifice for "development," as though their existence could be traded with modernity and progress usually associated with the appropriation, exploitation and destruction of their land and resources.

II. JBIC Environmental and Social Guidelines

JBIC established a new set of environmental and social guidelines in April 2002, entitled “JBIC Guidelines for Confirmation of Environmental and Social Considerations (the Guidelines).” The new guidelines were the result of extensive lobby work done by Japanese NGOs, in partnership with NGOs in developing countries, including organizations of indigenous peoples. Substantial recommendations pertaining to social issues and human rights, drawn from community lessons and experiences with JBIC-funded projects, were submitted to JBIC for incorporation in the new guidelines. However, these recommendations were not reflected in the new set of guidelines. Nevertheless, the new Guidelines are much better and more encompassing than the old ones. The new Guidelines put more emphasis on environment protection and procedures on environmental and social considerations for project funding and monitoring.

The preface of the Guidelines states that “Japan Bank for International Cooperation (hereafter referred to as “JBIC”) establishes and makes public “JBIC Guidelines for Confirmation of Environmental and Social Considerations” (hereafter referred to as the “Guidelines”) with the objective of contributing to efforts by the international community, particularly developing regions, towards sustainable development, through consideration of the environmental and social aspects in all projects (hereafter referred to as project of projects) subject to lending or other financial operations (hereafter referred to as “funding”) by JBIC. Environmental and social considerations refer not only to the natural environment, but also to social issues such as involuntary resettlement and respect for human rights of indigenous peoples (hereafter collectively referred to as “environment”). The guidelines apply commonly to JBIC’s International Financial Operations and Overseas Economic Cooperation Operations”¹.

The first part of the Guidelines² contains basic policies, principles and procedures and disclosure of information for confirmation of environmental and social considerations. It also includes environmental reviews for decision-making and loan agreements, as well as compliance with guidelines and implementation and review of guidelines.

The second part³ deals with environmental and social considerations required for funding projects, categorization of projects, information required for the screening process, and items requiring monitoring. The part on environmental and social considerations for funding contains provisions on compliance with laws, standards and plans; social acceptability and social impacts; involuntary resettlement, indigenous peoples and monitoring.

Because the Guidelines are new, its implementation is only for new projects for which funds were requested on or after 1 October 2003, which was when its effectivity commenced.

JBIC has also established Objection Procedures under the new Guidelines⁴. This mechanism is for project-affected people to file a complaint to JBIC if they have reasons or basis to believe that JBIC has not followed its own guidelines. A complaint sent through the objection procedures will then be given to a

¹ Japan Bank for International Cooperation, *JBIC Guidelines for Confirmation of Environmental and Social Considerations*, p.1.

² *Ibid.*, pp. 3-12.

³ *Ibid.*, pp. 13-25.

⁴ Japan Bank for International Cooperation, *Summary of Procedures to Submit Objections Concerning JBIC Guidelines for Confirmation of Environmental and Social Considerations*

neutral Examiner appointed by JBIC who will review and investigate the complaint.

Since the Guidelines were written in a comprehensive manner and not with separate specific guidelines on key areas for environment and social consideration, there is only one provision pertaining specifically to indigenous peoples. Some of the other provisions are also relevant to indigenous peoples as enumerated below:

The Guidelines: Part 2 1. Environmental and Social Considerations Required for Funded Projects

(Indigenous Peoples)

- When a project may have adverse impact on indigenous peoples, all of their rights in relation to land and resources must be respected in accordance with the spirit of the relevant international

⁵ Japan Bank for International Cooperation, *JBIC Guidelines for Confirmation of Environmental and Social Considerations*, p.15.

declarations and treaties. Efforts must be made to obtain the consent of indigenous peoples after they have been fully informed.⁵

(Involuntary Resettlement)

- "Involuntary resettlement and loss of means of livelihood are to be avoided where feasible, exploring all viable alternatives. When after such examination, it is proved unfeasible, effective measures to minimize impact and to compensate for losses must be agreed upon with people who will be affected;
- People must be resettled involuntarily and people whose means of livelihood will be hindered or lost must be sufficiently compensated and supported by project proponents, etc. in a timely manner. The project proponents, etc. must make efforts to enable people affected by the project, to improve their standard of living, income opportunities and production levels. Measures to achieve this may include: providing land and monetary compensation of losses (to cover land and property losses), supporting the means for alternative sustainable livelihood and providing the expenses necessary for relocation and the re-establishment of a community at relocation sites; and
- Appropriate participation by the people affected and their communities must be promoted in planning, implementation and monitoring of involuntary resettlement loss of their means of livelihood, plans and measures against it.⁶

(Social Acceptability and social impacts)

- Projects must adequately coordinated so that they are accepted in a manner that socially appropriate to the country and locality in which the project is planned. For projects with potentially large environmental impacts, sufficient consultations with stakeholders, such as local residents, must be conducted vis disclosure of information from an early stage where alternative proposals for the project plan may be examined. The outcome of such consultations must be incorporated into the contents of the project; and
- Appropriate consideration must be given to vulnerable social groups, such as women, children, the elderly, the poor, and ethnic minorities, all of whom are susceptible to environmental and social impacts and who may have little access to the decision-making process within society.⁷

(Monitoring)

- When third parties point out, in concrete terms, that environmental and social considerations are not being fully undertaken, it is desirable that a forum for discussion and examination of countermeasures can be established based on sufficient information disclosure and include the participation of stakeholders in the relevant project. It is also desirable that an agreement be reached on procedures to be adopted with a view to resolving the problem.⁸

III. How do the new guidelines relate to collective rights of indigenous peoples and to social issues?

While there are positive provisions of the JBIC Guidelines relating to indigenous peoples and to social considerations, these are by far very inadequate in ensuring the respect and recognition of indigenous peoples' rights and fundamental human rights pertaining to development concerns. The provision on indigenous peoples, which mentions the respect of IP rights in relation to land and resources in

⁶ Ibid.

⁷ Ibid, pp. 14, 15.

⁸ Ibid, p. 16.

accordance with the spirit of relevant international declarations and treaties, does not provide the substance and mechanisms to ensure the implementation of this provision.

Provision on indigenous peoples:

The single provision addressing the collective rights of indigenous peoples⁹ does not comprehensively capture the particularities of indigenous peoples as one of the groups most vulnerable to development interventions with long-term adverse impacts. It does not account for the interrelationship of land and resources to the indigenous peoples' distinct ways of life, identity and culture, and indigenous socio-political systems. Further, it does not recognize the indigenous peoples' collective views and concept on the use and management of land and resources, commonly targeted for "development". Thus, the provision for the respect of the rights of indigenous peoples in relation to land and resources becomes shallow as there is no further elaboration of this right. Protecting the distinct ways of life of indigenous peoples, their culture and identity as well as their collective integrity, should be part of their sustainable development, as a matter of their right to self-determination.

The provision that "efforts must be made to obtain the consent of the indigenous peoples after they have been fully informed"¹⁰ is too weak, as it does not require "consent" of affected indigenous peoples for projects applied for funding by JBIC. This is contrary to existing international standards on the recognition of the right to "Free Prior and Informed Consent" or "FPIC", in relation to indigenous peoples.

"Observing that indigenous peoples have suffered and continue to suffer from discrimination", and, "in particular that they have lost their land and resources to colonists, commercial companies and State enterprises," the Committee on the Elimination of Racial Discrimination called upon states-parties to "ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent."^[i]

The UN Committee on Economic, Social and Cultural Rights in 2001, noted "with regret that the traditional lands of indigenous peoples have been reduced or occupied, without their consent, by timber, mining and oil companies, at the expense of the exercise of their culture and the equilibrium of the ecosystem." It then recommended that the state "ensure the participation of indigenous peoples in decisions affecting their lives. The Committee particularly urges the State party to consult and seek the consent of the indigenous peoples concerned"^[ii]

Other international bodies that have accepted the right of indigenous peoples to FPIC include the following:

- **UN** Sub-Commission on Promotion and Protection of Human Rights
- **UN** Permanent Forum on Indigenous Issues
- **UN** Working Group on Indigenous Populations
- **UN** Development Programme
- **UN** Centre for Transnational Corporations
- **Convention** on Biological Diversity
- **Convention** to Combat Desertification, particularly in Africa
- **Inter-American Commission** on Human Rights
- **Inter-American Development Bank**

⁹ Ibid, p. 15.

¹⁰ Ibid, p. 15.

- **A**ndean Community
- **E**uropean Council of Ministers
- **E**uropean Commission
- **O**rganization of African Unity

Given the level of international acceptance of the right of indigenous peoples to FPIC, the JBIC Guidelines then lacks the requirement for the recognition and respect of FPIC, which is very critical in addressing the concerns of indigenous peoples with regard to development intervention. The fear that FPIC gives “veto rights” to indigenous peoples overshadows the fundamental premise that the participation of indigenous peoples in the decision-making process is within the framework of their right to self-determination.

Other provisions of the Guidelines on requirements for project funding such as social acceptability and social impacts¹¹, resettlement¹² and project monitoring¹³, contain positive measures that could be useful for indigenous peoples. These are the requirements on disclosure of information, sufficient consultation, and alternative proposals with less environment impacts, sufficient compensation for resettled people, and appropriate participation by affected people in the planning, implementation and monitoring of involuntary resettlement plans. However, there are major loopholes in these provisions in relation to the concrete measures and mechanisms that could ensure the exercise of the rights of affected communities, including indigenous peoples.

Information Disclosure:

On the provision for information disclosure¹⁴, this will be mainly done through the website of JBIC¹⁵, and some documents will only be in Japanese. Therefore, there are serious problems in terms of access to information by affected communities, especially remote communities. Understanding these documents is another problem because documents for disclosure are either in Japanese and English only, and not in a language affected communities are familiar with. Likewise, JBIC upholds the confidentiality of certain information in relation to commercial and other matters. Some of this information is also important for the affected communities and the public to know, especially if it pertains to the terms of agreement which may be disadvantageous to the borrower and the public.

The positive aspect of JBIC’s information disclosure guideline is the right of affected communities and other stakeholders to inform JBIC of their views, concerns and position in relation to a project under application to JBIC for their consideration. However, it does not mention how this information will be considered in the decision-making process of JBIC.

Involuntary resettlement:

While the JBIC Guidelines provide for ‘alternative options’ to avoid involuntary resettlement if possible¹⁶, the bank still considers funding projects which will lead to involuntary resettlement. One of the most critical, irreversible, long-lasting and adverse impacts of development projects on indigenous peoples is

¹¹ Ibid, pp. 14, 15.

¹² Ibid, p. 15.

¹³ Ibid, p. 16.

¹⁴ Ibid, pp. 9, 10.

¹⁵ Japan Bank for International Cooperation, <http://www.jbic.go.jp/english/environ/joho/index.php>

¹⁶ Ibid, p. 15.

involuntary resettlement. Indigenous peoples' culture, identity, survival and development are very much tied up with their land and resources. Thus, the displacement of indigenous peoples from their land and resources does not only imply economic dislocation but also disruption of the socio-cultural dimension of their survival as indigenous peoples. For indigenous peoples, "Land is life." Thus, involuntary resettlement, as provided in the JBIC Guidelines, is a direct violation of indigenous peoples' right to land and resources. This provision for involuntary resettlement is contradictory to the other provision of the JBIC Guidelines pertaining to the "respect for the right of indigenous peoples in relation to their land and resources"¹⁷.

On the provision for compensation for the loss of land and property, to include monetary compensation, land and livelihood¹⁸, these compensation measures cannot replace the loss of indigenous peoples in terms of the socio-cultural impacts of displacement. These impacts are beyond material compensation thereby requiring more thorough social impact studies that must be taken into account in the decision-making process of JBIC.

Social Acceptability and impacts:

The JBIC guidelines on social acceptability and social impacts mention the positive requirement for sufficient consultation and information disclosure¹⁹. However, these fall short of the right to FPIC of affected indigenous communities as already mentioned above. The right to FPIC is by far the most appropriate mechanism for social acceptability of projects by indigenous peoples. The substance and mechanism of FPIC does not only relate to information disclosure, but also provides for the right of communities to receive information in a language understood by them, and to request other related and relevant information from other sources. Likewise, the right to FPIC does not only provide for consultations, but rather, consent that is freely given, not under coercion, bribery or duress. Also under FPIC, indigenous systems of decision-making are recognized. The FPIC provision is by far the most appropriate mechanism for social acceptability of projects by indigenous peoples.

Monitoring:

While JBIC allows the formation of a forum to include stakeholders in addressing environmental and social impacts of projects under implementation²⁰, it fails to provide for a clear mechanism of accountability by project proponents and funder. Experience has shown that outstanding issues in relation to environmental and social impacts of JBIC-funded projects remain unresolved.

Objection Procedure:

While the Objection procedure is a positive step in addressing possible violations by JBIC of its own Guidelines, there is no clear mechanism on how these violations will be addressed by JBIC and what affected communities can expect in terms of compensation and redress of grievances. The only defined process in the Objection procedure is the appointment of an independent/neutral Examiner²¹ who will receive the complaint, evaluate it, conduct his/her own independent investigation and submit a report

¹⁷ Ibid, p. 15.

¹⁸ Ibid, p. 15.

¹⁹ Ibid, pp. 14, 15.

²⁰ Ibid, p. 16.

²¹ Japan Bank for International Cooperation, *Summary of Procedures to Submit Objections Concerning JBIC Guidelines for Confirmation of Environmental and Social Considerations*, p.4.

and recommendation to the Governor²². It is then up to the Governor to decide what to do with the report and recommendation. Thus, there still is no clear accountability on the part of JBIC for proven violations of its own Guidelines.

IV. Brief History of Indigenous Engagement with or Opposition to JBIC

➤ Koto Panjang Dam, Indonesia (1992-96)

The Koto Panjang Dam on the Kampar Kanan and Mahat Rivers in West Sumatra, Indonesia, was built with loans from what is now the Japan Bank for International Cooperation (JBIC). The feasibility study for the project was funded by the Japan International Cooperation Agency (JICA) and carried out by the Tokyo Electric Power Services Co., Ltd (TEPSCO). Japanese and Indonesian companies were awarded the construction contracts for the main part of the dam.

At least 4,886 households, representing between 17,000 and 23,000 people, were relocated in the early 1990s to make way for the dam. Those displaced by the dam were Minagkabau, who lived according to their traditional customs and culture. The Minagkabau are an ethnic group living mainly in West Sumatra province, in the midwestern part of the island of Sumatra. The Minagkabau consist of village communities based on customary law. They are followers of Islam, and there is a mosque and a communal building called the rumah gadang (meaning "large house") at the center of every village. Land in Minagkabau society is traditionally communally owned, with each village having common land (ulayat) for use by the entire village or an individual clan (suku). The ulayat cannot be bought and sold, and is guided by customary law.

The project's feasibility study failed to take into account any of these characteristics of Minagkabau society. The evictees mounted a strong resistance to the treatment they were receiving, but the Suharto regime stationed military in the area and suppressed the opposition. Thus, with the social and cultural identity of Minagkabau society ignored, the villagers were resettled in a place that had neither ulayat land, nor rumah gadang. In addition, housing provided by the government was not the traditional Minagkabau style on stilts, but rather poorly-built wooden houses situated directly on the ground. Problems arose with the mosques as well, with some built facing the wrong direction and others too small for everyone to enter, so that the people had to build their own mosques. Besides these problems, existing relationships in society were ruined when people lost respect for some village leaders who had difficulty coping with resettlement and accepted bribes.

The Minagkabau traditional lifestyle and culture has been destroyed and their living standards have declined considerably. The local people demanded a halt to the dam construction and Japanese funding from the time that work started in 1992. However, their pleas were ignored and the project was completed in 1996. Nevertheless, the voices of opposition have continued to this day. In September 2002, 3,861 people from the project area filed a lawsuit in the Tokyo District Court demanding that the Japanese government, JBIC, JICA, and TEPSCO take measures to restore the affected rivers, and that they pay compensation of 5 million yen (about \$42,000) per person.

➤ San Roque Dam, Philippines(1998-2003)

The San Roque Multi-purpose Project has been one of the most controversial projects funded by JBIC to

²² Ibid., pp. 9-14.

date. The dam has displaced more than 4,400 people, and threatens the livelihood of thousands of indigenous Ibaloi people living upstream of the dam.

The Agno River is known as the cultural heartland of the Ibaloi people. The fertile lands along the river and the gold ore found in the mountains have sustained several distinct Ibaloi communities engaged in agriculture, fishing and small-scale gold panning for generations. For the Ibaloi, land and water are resources to be used and shared with their kin, ancestors and gods. These very resources are under threat because of the San Roque Dam project. The Cordillera People's Alliance estimates that approximately 20,000 residents of Itogon, Benguet, will be affected by sediment that will accumulate behind the reservoir over the course of the dam's life. This sediment will eventually submerge the homes, rice terraces, orchards, pasture lands, gardens and burial grounds of the Ibaloi living close to the Agno River.

This is not the first time the Ibaloi have experienced the negative impacts of hydroelectric dams. The Ambuklao and Binga dams were constructed upstream along the Agno River in the 1950s. During that time, the Ibaloi were called upon to sacrifice their lands and their lives for the sake of "national development". Though both dams were for electric power, nearby communities have seen few benefits and most still have no electricity. Many of those relocated were never compensated for the loss of their homes, lands and livelihoods, and more than 70 Ibaloi families lost their land and houses to sedimentation that has backed up behind the Ambuklao Dam. At present, Ambuklao Dam is non-functional as a result of the serious sedimentation problem. Binga Dam is also heavily silted and its partial operation is maintained by the water coming from Ambuklao Dam. Because of this experience, the Ibaloi have been opposed to the San Roque dam project even before its inception in 1998.

The Indigenous Peoples' Rights Act (IPRA) of the Philippines requires the free and prior informed consent of indigenous peoples for projects that impact their ancestral lands. When the affected Ibaloi communities learned of the San Roque Dam project, they immediately raised their concerns about the adverse impacts of this project. A report released in 2001 by the Office of the Presidential Assistant on Indigenous Peoples' Affairs validated claims that project proponents did not obtain the free and prior informed consent of affected indigenous communities and that consultations were conducted only after the project was already underway. Despite the violation of Philippine law and JBIC policies on indigenous people, and in spite of efforts by affected communities to reach out to the Philippine government, JBIC and the power company through dialogues, appeals, and petition letters, the project was built, and started commercial operations in May 2003. At present, there remain serious outstanding economic and social issues, which need to be addressed by project proponents and JBIC. These include the worsening siltation build-up in the upstream of the dam project, affecting the indigenous peoples in the area.

➤ **Kelau Dam, Malaysia (2005-)**

The Kelau Dam was proposed to meet the water demands of Selangor State and Kuala Lumpur in Malaysia. The project plans to transfer around 1.5 billion liters of water per day from the Kelau River in Pahang State to the Langat River in Selangor State. JBIC approved the 82.04 Billion yen loan to the Malaysian government for the Kelau dam on 31 March 2005.

The dam will have serious impacts on the Kelau River ecosystem and will require the resettlement of 325 Orang Asli (indigenous people) and 120 Malay farmers, thereby seriously affecting their lives and livelihoods. Yet there is no clear need for the water: studies by Malaysian NGOs show that the current water supply system in Selangor state is wasteful and beset with inefficiencies. Investment in water conservation measures and reduction in system losses could result in water savings that would make the construction of the Kelau Dam unnecessary.

Although the project proponents claim that the people are agreeable to the project, the Centre for Orang Asli Concerns (COAC) found that the affected Temuan families did not give their free, prior and informed consent to the relocation. According to the village chief,

It's true I say I support (the project). Because we Orang Asli have been weakened. Others weaken us. They say resettle, we have to resettle. ... Officers come in and say, "Tok Batin, resettle" and we are forced to resettle. They pressure us until we cannot think anymore. If we have a choice, we want to stay where we are. The land is our ancestors' land. We have been there for a long time. But what can we do? The Government wants to give water to Selangor²³.

Furthermore, the Government of Malaysia has reported to the JBIC that the Orang Asli houses of Sungai Temir will not be inundated and the people can choose either to stay or to move from the current village to a new settlement in Sungai Bilut. This decision, however, has not been conveyed to the Temuan families at all.²⁴

➤ **Sakhalin II Oil Development Project, Russia**

The Sakhalin II Project in Russia is developing oil and natural gas reserves that will be exported to Japan, Korea and other countries. The JBIC and the European Bank for Reconstruction and Development (EBRD) are now considering co-financing the project. The project could greatly damage the Indigenous Peoples of the North of Sakhalin Region as well as the fisheries and ecosystems in the Sea of Okhotsk.

Sakhalin-II project started to cause many problems for indigenous peoples (including damage to fish resources) since 1998 when the Molikpaq platform was installed. In spite of this, the proponent, Sakhalin Energy, and its shareholders (Royal Dutch/Shell Group, Mitsui and Mitsubishi) did not pay an appropriate compensation directly to Indigenous Peoples' communities. Another concern is that the project will cause the reduction of fish stocks through the construction of a pipeline trench across the salmon spawning rivers. Reindeer pastures and the number of forest animals will also be cut down by the building of onshore pipelines that will pollute the environment. The harm done to the animal and plant world in traditional land-use areas takes a direct toll on the vital activities of indigenous peoples.

The Sakhalin indigenous peoples have demanded to conduct an Independent Ethnological Expert Review in order to estimate the past, current and future impact of the Sakhalin-II project on the environment and traditional use of natural resources of the Sakhalin Indigenous Peoples. This review should be different from the Environment, Social and Health Impact Assessment which was done by "Sakhalin Energy" with regard to indigenous peoples' issues. The people have submitted letters to JBIC on their concerns and demands since 2004.

Since the proponent requested funding for the project before October 2003 when the new JBIC Guidelines came into effect, JBIC applied its guidelines only partially to the project. JBIC established the "Environmental Forum on Sakhalin II" in order to ensure transparency and equity in its review process. Japanese fisher folk, experts and NGOs are concerned about the significant impacts of the project on Japan itself. The environmental forum took place nine times from October 2004 till May 2005 in Tokyo and Sapporo. This forum for the specific program was epoch-making under the new JBIC Guidelines.

²³ Centre for Orang Asli Concerns (2002). The Orang Asli position in the proposed Kelau Dam Project. Report submitted to Friends of the Earth, Japan.

²⁴ Centre for Orang Asli Concerns . The letter submitted to JBIC on March 17 and 28, 2005.

It is still a question, however, how the forum will address the problems caused by the project. JBIC has failed to propose any concrete measures to address the issues raised by the participants in the forum. In addition, the agenda of the forum was limited to issues related to the impacts in Japan, while issues related to the Sakhalin indigenous peoples were excluded from the agenda.

V. Experiences and Lessons Learned in Engagement in Policy Advocacy and Project Implementation using JBIC Guidelines

➤ Failure to properly assess social and environmental impacts prior to approval

JBIC's project appraisal process is seriously deficient and needs radical improvement. JBIC failed to adequately assess the project's social and environmental impacts prior to project approval. Instead, JBIC relied on information provided by the government and/or the project developer. Such failure has resulted in impacts far beyond what was originally predicted, destroying the lives and livelihoods of many thousands of people. In particular, the assessment of social impacts on affected indigenous communities was minimal, if not under-estimated, such that it was not able to capture and bridge a better appreciation of the particularities of indigenous communities. Likewise, there is a tendency to measure social and cultural impacts in economic and material terms, while these concerns are more intergenerational. Indigenous communities commonly argue that these impacts cannot be mitigated by money or projects.

➤ Failure to ensure proper consultation and release of information

JBIC and the project developers failed to release adequate information to affected communities and the public. In many cases, JBIC simply refused to release critical documents such as environmental impact assessments and resettlement plans, citing lack of government approval. While JBIC's new Environmental Guidelines mandate a higher standard of information disclosure than previously, JBIC is still refusing to release important documents for projects already funded or in the pipeline. Furthermore, steps have not been taken to ensure access to information by affected communities.

Additionally, JBIC has failed to involve affected communities in meaningful decision-making, with respect for the right of indigenous peoples to free, prior and informed consent. This has resulted in projects being implemented without the involvement or participation of affected communities. Too often, indigenous communities are offered funds and projects, instead of having a substantial and meaningful dialogue with the necessary and important information provided to affected communities. Likewise, functional structures of traditional leadership are not acknowledged or recognized. There have even been attempts to bribe local leaders to support and endorse the project.

➤ Inadequate monitoring and evaluation during and after project construction

JBIC's monitoring and evaluation procedures are clearly inadequate. The *modus operandi* for JBIC in the past has been to disburse funds and then leave the project to the government to implement. As a result, communities are left to suffer impacts, without any recourse or access to the project funders. In many cases, promises of compensation are not honored by the government or implementing agency. Yet, JBIC refused to discuss these issues with the affected communities and directed the people to talk to the government instead. Since many of these projects would not push through without JBIC funding, JBIC has a responsibility to ensure that the projects are implemented in accordance with JBIC guidelines and international human rights standards.

In some cases, such as the San Roque Multipurpose Project, JBIC did undertake regular monitoring missions as a result of pressure from affected communities and International NGOs. However, there was minimal follow-up to these missions and no means of ensuring that the JBIC recommendations were

adhered to by project developers and the government.

➤ **No mechanism to deal with outstanding problems**

Many projects have resulted in communities being worse off than they were before. Yet JBIC has no mechanism for dealing with the serious environmental and social problems created by its projects. There is a growing demand for JBIC to take responsibility for repairing the harm caused by its previously funded projects. JBIC should allocate resources for retroactive compensation, mitigation and rehabilitation measures.

VI. Recommendations for Strategic Engagement

JBIC stipulates in its review of Guidelines the following:

“JBIC verifies the status of the implementation of the Guidelines, and, based on its findings, conducts a comprehensive review of the Guidelines within five (5) years of their enforcement. Revisions may then be made as needed. When making revisions, JBIC will seek the opinions of the Japanese Government, the governments of developing countries, Japanese companies, experts, NGOs etc., while maintaining transparency in the process.”²⁵

Since the Guidelines came into effect on October 1, 2003, JBIC is set to conduct a comprehensive review and revision of the Guidelines by October 2008.

As demonstrated by the experiences of indigenous communities with JBIC-funded projects, and based on an analysis of the present guidelines and its use, there is an urgent need to engage with JBIC on policy reforms to include the following:

1. For JBIC to formulate a specific guideline for Indigenous Peoples such as that of the World Bank and the Asian Development Bank. This Policy formulation must take into account existing international laws and instruments pertaining to indigenous peoples such as the ILO 169, the right to Free, Prior and Informed Consent or “FPIC”, among others. It should also take into account the “Rights-Based Approach to Development” as its over-all framework. Likewise, the policy formulation of JBIC on Indigenous Peoples must ensure the direct involvement of indigenous peoples and their active participation in the process in order to ensure that their views, concerns and issues are taken into account and integrated in the finalization of the Policy.
2. In the absence of a separate Policy on Indigenous Peoples, the present Guidelines of JBIC must ensure the implementation of the right of indigenous peoples in relation to their land and resources. Likewise, the existing internationally-accepted right to FPIC must be operationalized in “accordance with the spirit of the relevant international declarations and treaties”.
3. Environmental and social impact studies should fully account for the specificities of indigenous peoples, to include socio-cultural impacts, intergenerational livelihood activities and views of affected indigenous peoples on compensation or non-compensation of losses which are beyond material measurement. These studies must ensure a process of transparency and validation by affected communities, prior to consideration by JBIC for project funding.

²⁵ Japan Bank for International Cooperation, *JBIC Guidelines for Confirmation of Environmental and Social Considerations*, p.12.

4. To recommend accountability measures on the part of JBIC to address violations on its own Guidelines through the Objection Procedure. This shall include measures on just compensation of affected communities, mitigation and rehabilitation of damaged environment and sources of people's livelihood.

Abbreviation List

COAC	Centre for Orang Asli Concerns
EBRD	European Bank for Reconstruction and Development
FPIC	Free Prior and Informed Consent
IFO	International Financial Operations
IP	Indigenous Peoples
IPRA	Indigenous Peoples' Rights Act of the Philippines
JBIC	Japan Bank for International Cooperation
JEXIM	Japan Export - Import Bank
JICA	Japan International Cooperation Agency
ODA	Official Development Assistance
OECD	Overseas Economic Cooperation Fund
TEPCO	Tokyo Electric Power Services Co., Ltd