

**INVESTORS' BRIEF**

**PROPOSED PETROBRAS OIL DEVELOPMENT IN ECUADOR'S BLOCK 31  
IN YASUNI NATIONAL PARK**

**VIOLATIONS OF INTERNATIONAL GOOD PRACTICE AND OF THE  
EQUATOR PRINCIPLES**

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## **I. Summary**

The Brazilian oil company Petrobras submitted to the Ecuadorian government in September, 2006 a plan and environmental assessment for oil development in one of the most important biodiversity reserves and protected areas in the world, Ecuador's Yasuni National Park. The project would entail, inter alia, the construction of two oil platforms in the Park, the construction of an oil processing facility near an ecologically sensitive river that forms the northern boundary of the Park, flow lines from the oil platforms in the Park to the processing facility, and expansion of a supply camp on the Napo River 12.8 kilometers north of the processing facility.

The project design and environmental assessment violate major requirements of the Equator Principles and international good practice as reflected in the Performance Standards of the World Bank International Finance Corporation.

The project environmental assessment acknowledges "the possibility of a catastrophic [oil] spill cannot be ruled out" at the processing plant, and that there is "probable" risk that indigenous communities affected by the project will engage in physical protests and interventions that could lead to work stoppages and violence. An international alliance of 43 scientists from Ecuador, North America and Europe has proposed several critical, feasible design alternatives that would mitigate many of these risks and impacts, which were not accepted by Petrobras and the previous Ecuadorian government.

A new government assumed power in Ecuador on January, 15, 2007. On February 3, President Correa of Ecuador said in a nation-wide radio broadcast the government would suspend the contracts of oil companies that needlessly damage the environment.

Non-governmental organizations and concerned scientists around the world believe that any oil development in Block 31 is unacceptable, given that it is taking place in a National Park which is the core area of a UNESCO Biosphere Reserve and is adjacent to territories for indigenous peoples living in voluntary isolation which have been decreed to be untouchable. As a bare minimum they ask that all financial institutions involved in support for Petrobras and its development of Block 31 convey to Petrobras concern over the reputational risk the project presents, and urge a revision of project design to mitigate unacceptable environmental and social risks. They also request that financing institutions communicate to Petrobras the advisability of adhering to the Equator Principles for environmentally and socially sensitive project investments.

## **II. Background**

### **A. The Project**

Yasuni National Park is one of the most biodiverse areas on earth. The project provides for the construction of two oil drilling platforms, Apaika and Nenke, separated by 5.1 kilometers, within the boundaries of Yasuni National Park. The Platforms and activity

associated with them will impact the traditional hunting grounds of the Waoroni indigenous people. A Central Processing Facility covering some 16 hectares is to be built on the alluvial plain of the Tiputini River, 2 kilometers from the river, which serves as the northern boundary of the National Park. Sixteen hectares of mature, inundated forests will have to be drained and leveled to build the plant. The plant, according to the September, 2006 Environmental Assessment (EA) submitted by Petrobras to the Ecuadorian Environment Ministry "will be the largest location for construction and industrial activities, and large amounts environmental impacts such as noise, emissions, liquid and solid waste will be generated."<sup>†</sup> "The possibility of a catastrophic spill cannot be ruled out."<sup>‡</sup>

About 24 kilometers of Flow Lines (two parallel lines, each 16" in diameter) will be constructed from the two oil drilling platforms to the Central Oil Processing Facility (CPF). An oil pipeline will be constructed to connect the CPF to an oil pipeline facility in Campo Eden Yuturi for export to the Pacific coast, located in Block 15 about 30 kilometers from the CPF. Construction of the oil platforms and flow lines will take place through the so-called island approach, i.e. transport of machinery, equipment, tubing, and personnel will be by helicopter from the CPF to areas within the national park. Equipment, machinery, personnel etc. will be shipped to the CPF via an already constructed 12.8 kilometer road that runs south from the dock landing of Chiru Isla on the Napo River. The right of way of this road, which was already constructed as part of plans in the earlier proposal to continue the road into the Yasuni National Park, is 20 meters. The supply camp at Chiru Isla will be expanded from a capacity of 56 to 157 people, with corresponding increases in services such as energy, communications, water treatment etc. Indigenous Kwicha communities along the Napo River would also be impacted by the construction supply activities.

## **B. Context—Recent Critical Comments and Recommendations Concerning the Project and Environmental Assessment**

Proposed development in the Park has been the subject of letters of concern to the Presidents of Ecuador and Brazil in recent years, including letters letter from E.O. Wilson, Professor of Biology at Harvard, the Smithsonian Institution, Dr. Jane Goodall, and the Association for Tropical Biology and Conservation (the world's largest tropical scientific organization.)<sup>§</sup> While revising the project plan to not construct a road and

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<sup>†</sup> Proyecto de Desarrollo y Produccion del Bloque 31, Campo Apaika Nenke, Estudio de Impacto y Plan de Manejo Ambiental, Preparado para Petrobras, Preparado por Entrix, Quito-Ecuador, Proyecto 1109803, Septiembre 2006. (EA)

<sup>‡</sup> EA, p. 6-16.

<sup>§</sup> Ibid.

<sup>§</sup> See, e.g., Letter of Carl Ross, Mathew Finer, Save America's Forests; Dr. Jane Goodall, DBE, The Jane Goodall Institute, Stuart Pimm, Duke University, Edward O. Wilson, Harvard University, Dr. Thomas Lovejoy, The Heinz Center, and Dr. Peter Raven, National Academy of Sciences and Missouri Botanical Gardens, to Ing. Lucio Gutierrez, President, Republic of Ecuador, Jose Eduardo de Barros Dutra, President and CEO of Petrobras, et al., February 14 2005.

processing plant in Yasuni has addressed some concerns, the revised plan still poses major environmental risks identified in earlier scientific correspondence, as evidence, inter alia, by the major violations of Equator Principle financing requirements detailed in Section II of this Investors' Brief.

On September 30, 2006 43 concerned scientists from Ecuador, the United States and Europe wrote the President of Ecuador and its Environment Minister concerning the most recent Petrobras project proposal again summarizing the environmental value and social vulnerability of Yasuni:

Yasuní conserves one of the larger contiguous tracts—almost one million hectares—of the Amazonian rainforest, identified by Conservation International as the most biodiverse intact wilderness in the world. Based on existing research, the forests of Yasuní are possibly the most diverse in the world when considering all taxonomic groups. For this reason, World Wildlife Fund scientists have declared it among the most important ecoregions globally to protect. In addition, the Park contains intact megafaunal assemblages, including the globally endangered Giant Otter (*Pteronura brasiliensis*) and Giant Armadillo (*Priodontes maximus*), and is recognized by Wildlife Conservation Society for its outstanding wildlife. Thus, Yasuní National Park is among Ecuador's top biological treasures. Furthermore, Yasuní and adjacent areas, declared a UNESCO Man and The Biosphere Reserve, are home to the indigenous Waorani, and the Tagaeri and Taromenane, the last two known groups of people living in voluntary isolation in the Ecuadorian Amazon. The two principal Waorani representative organizations, ONHAE and AMWAE, have formally called for a moratorium of oil development in this area. This Park, as an IUCN category II strict protected area, should not be subjected to the many known impacts of oil development, including the initial clearing of forest for facilities and rights of way, including erosion; noise and light pollution; contamination of rivers, lakes, and soils from inevitable later oil spills; and major cultural changes among the indigenous communities in the region.\*

The 43 scientists recommended that no new oil drilling be undertaken in Yasuni, "regardless of the method used," because of exceptional global biodiversity value of the Park, the lack of full consultation with, and informed consent of significant elements of the indigenous population affected, and "the known broad direct and secondary environmental and social impacts." If drilling were to proceed, as a bare minimum several changes to the existing plan, using technically and financially feasible measures—which were not considered in the EA—should be preconditions:

- 1) A new Central Processing Facility (CPF) should not be built next to the Tiputini River. Instead, feasibility studies should be undertaken immediately to investigate the possibility of expanding the existing processing facility at Eden Yuturi Camp (CEY) in Block 15 to process oil coming out of Block 31.
- 2) The new 12.8 km access road, built by Petrobras in 2005 through the northern buffer zone of the park, should be eliminated and fully reforested.
- 3) The right-of-way to be permanently deforested for the flow lines and pipeline should be reduced to a width of less than 5 meters.
- 4) The Apaika drilling

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\* Scientists Concerned for Yasuni, "Comments to Project for Development and Production of Block 31: the Apaika and Nenke Oil Fields," Quito, 30 September 2006.

platform should not be constructed. Instead, Extended Reach Drilling (ERD) should be used from the Nenke platform to access the oil within the Apaika field.<sup>5</sup>) Prior Informed Consent must be obtained from the Waorani leaders of ONHAE and AMWAE.\*

On November 24, 2006, the Ecuadorian Environment Ministry replied rejecting all of the recommendations for mitigation of the scientists, maintaining that the proposed alternatives were either technically infeasible, or would cause more environmental damage than they would mitigate, and that consultation with indigenous communities had been full and informed. A detailed rebuttal of these assertions was forwarded to the new Ecuadorian Government by two technically informed NGOs, Finding Species, and Save America's Forests, on January 8, 2007. Among other things, the January 10 NGO letter cited several examples and technical studies from leading oil companies and oil service companies such as BP, Statoil, Schlumberger and K&M Technologies rebutting the assertions of technical infeasibility or impracticality for the alternative, lesser impact drilling suggestions of the 43 Scientists Concerned for Yasuni.

In the second section of this Investor's Brief we examine in detail the violations of the Equator Principles of the current proposed oil development plan of Petrobras for Block 31, with specific reference to the most recent EA submitted to the Ecuadorian Government in September, 2006.

### **III. Violations of the Equator Principles**

The revised Petrobras project and environmental assessment, while an improvement over the previous proposal to build a road into Yasuni National Park as well as locate the Central Processing Facility within the boundaries of the Park, still violates four of the ten July, 2006 Equator Principles in critical aspects. These include Principle 3, Applicable Social and Environmental Standards, Principle 5: Consultation and Disclosure; Principle 6: Grievance Mechanism; Principle 7: Independent Review.

#### **A. Applicable Social and Environmental Standards—Equator Principle 3.**

We note that Equator Principle 3 on Applicable Social and Environmental Standards requires that prospective Equator Principle Financial Institution (EPFI) borrowers "refer to the then applicable IFC Performance Standards..." and that the borrower will establish to a participating EPFI's satisfaction the project's overall compliance with, or justified deviation from, the respective Performance Standards...."

The EA does not mention nor refer to applicable IFC Performance Standards nor any other international standards. The major problem with the EA and project design is not the mere lack of specific reference to any applicable international standards, it is the major, substantive lack of compliance with critical, internationally accepted good practices that are articulated in the IFC Performance Standards. There are major omissions and deviations from critical elements of Performance Standards 1, 6 and 7. There no mention or reference to these omissions, nor is there even an attempt at

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\* Ibid.

providing justifications for deviating from these good practices in the Performance Standards, as required by the Equator Principle 3.

**1. a. Paragraph 9 of IFC Performance Standard (PS) 1, Social and Environmental Assessment and Management Systems requires that the EA "include an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed." The EA only examines alternative construction methods for the right of way from the Yasuni Park boundary to the two proposed oil drilling platforms.\***

There is no mention nor consideration of two critical alternatives identified in the letter of the 43 Scientists Concerned for Yasuni, namely 1. not constructing the Apaika drilling platform, but using Extended Reach Drilling from the Nenke Platform instead; 2. Not building a new Central Processing Facility (CPF) next to the Tiputini River adjacent to the Yasuni Park Boundary, but rather conducting feasibility studies to investigate the possibility of expanding the existing processing facility at Eden Yuturi Camp (CEY) in Block 15 to process oil coming out of Block 31. There is significant evidence that the proposed new Central Processing Facility would have potentially disastrous impacts on several vulnerable and/or endangered species, including in particular the globally endangered Giant Otter (*Pteronura brasiliensis*).<sup>†</sup> Nor is there any mention of two additional alternatives that would substantially mitigate environmental and social impacts of the project identified in the comments of the Scientists Concerned for Yasuni: "The new 12.8 km access road, built by Petrobras in 2005 through the northern buffer zone of the park, should be eliminated and fully reforested; The right-of-way to be permanently deforested for the flow lines and pipeline should be reduced to a width of less than 5 meters."

The detailed comments of the 43 Scientists Concerned for Yasuni, and the subsequent technical comments of "Finding Species" and "Save America's Forests"<sup>‡</sup> present substantial evidence that these alternatives are both technically and financially feasible.

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<sup>\*</sup> EA, pp. 4.73—4.81.

<sup>†</sup> "With fewer than 100 Giant Otters estimated for the park, any further impacts on this species must be minimized. The Giant Otter is known to use the majority of the Tiputini River and its watershed; disturbances from construction and subsequent hunting may threaten this population. In addition, contamination from road runoff and oil spills is likely to occur in the Tiputini River from the proposed Petrobras road and pipeline, which history has shown are almost unavoidable even when rigorous safety policies are in place. Such contamination would threaten Giant Otter groups downstream." Scientists Concerned for Yasuni National Park, Technical Advisory Report: The Biodiversity of Yasuni National Park, Its Conservation Significance, The Impacts of Roads Therein, and Our Position Statement, November 25, 2005, p. 37.

<sup>‡</sup> Scientists Concerned for Yasuni, "Comments to Project for Development and Production of Block 31: the Apaika and Nenke Oil Fields," Quito, 30 September 2006; Finding Species, Save America's Forests, Letter to Senor Econ. Rafael Correa, Presidente-Electo, Republica del Ecuador et al., RE: Repuesta a la carta titulada "Cientificos Preocupados por el Yasuni," 24 de Noviembre de 2006, Ofiico No., 7281-DPCC-SCA-MA, 8 de Enero del 2007.

**1.b. Paragraph 5 of PS 1 requires that "risks and impacts will be analyzed in the project's area of influence" which includes "(iii) areas potentially impacted by cumulative impacts from further planned development of the project, any existing project or condition, and other project-related developments that are realistically defined at the time the Social and Environmental Assessment is undertaken; and (iv) areas potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location."**

The EA does not analyze several impacts associated with existing and planned developments of the project associated with the 12.8 kilometer access road constructed by Petrobras to the edge of the Yasuni National Park, which the Scientists Concerned for Yasuni believe should be eliminated since "this road represents an unprecedented mode of access to the buffer zone of [the] park and the Tiputini River. Given what has happened along previous roads into the Ecuadorian Amazon, colonization, deforestation, and over-hunting along the road is inevitable." If the CPF were to be relocated, as recommended, there would be no need for the road. Moreover, although the revised plan for the project does not provide for extending the road directly into the park, none-the-less the right of way along the flow lines to the drilling platform(s) will still provide a path of access for squatters and settlers after construction is completed. The EA discusses, and explains the choice of the "conventional restricted method" for reducing social and environmental impacts of construction, but does not discuss monitoring and control measures to ensure that during the life of the project impacts from incursions along the right of way for the flow lines do not occur.

Even more serious, the EA briefly acknowledges extremely serious indirect, cumulative social and environmental risks associated with the project, since "*this project will generate operative conditions for the development of new projects in the area.*" (emphasis added) The EA maintains that evaluating these impacts is simply "outside the scope of this study." (EA p. 6.52). The EA does note that the development of drilling at the Apaika and Nenke platforms will facilitate oil development not just in other parts of Block 31, but in the adjacent ITT Block. For this reason, "the pressure that will exist for the construction of a road within Yasuni National Park will be greater and greater (cada vez mayor)." The project will also increase pressures on the indigenous communities living in voluntary isolation in the "Zona Intangible," the "Untouchable Zone" of some two million acres, created by Presidential Decree by outgoing former President Palacio in January, 2007, lying directly adjacent to the south of the Block 31. Two of these indigenous groups, the Tagaeri and Taromenane, probably also use part of the southern area of Block 31 as their territory. The EA's estimation that the project will also unleash further oil development in Block 31 is not a vague speculation, but is based in part on the fact that there already two other oil reserves have been documented in the southern part of Block 31, Obe and Nashino. The EA candidly points to the likely effect of the oil development in the northern part of Block 31 unleashing, and contributing to, a cumulative process of increasing outside pressure on vulnerable indigenous groups, including the risk that, if not from the current project, other projects it will facilitate, that "possible encounters between workers and these groups could result in massacres and attacks." "*In summary, more intense processes of pressure over the untouchable zone could render more acute cycles of internal and external [tribal] war...The worsening of*

*cycles of violence could have irremediable and very grave consequences for these peoples. On the one side, forced contact and dependency with national society; on the other hand, a serious threat of extermination."*<sup>\*</sup>

The EA makes clear that these are impacts in "areas potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location," as identified in PS 1, para. 5, but absolves the project proponents from any discussion of measures to address these issues as beyond the scope of the study. But **paragraph 13 of PS 1 clearly states** that "taking into account the relevant findings of the Social and Environmental Assessment and the result of consultation with affected communities, **the client will establish and manage a program of mitigation and performance improvement measures and actions that address the identified social and environmental risks and impacts** (the management program). **Thus, the EA suffers from an extremely grave disconnect: in conformity with the international good practice of PS 1 recognized by the Equator Principles, the EA is supposed to analyze risks and impacts in an area of influence that includes areas potentially affected by cumulative impacts of "other project-related developments that are realistically defined at the time."** The EA indeed does acknowledge and briefly identify some of the most serious of these cumulative impacts concerning communities in voluntary isolation in the Untouchable Zone and southern part of Block 31, *but there is no effort to address these impacts in the management plans.*

**1.c** We note that **paragraph 9 of PS 1 states that "in exceptional circumstances, a regional, sectoral, or strategic assessment may be require."** The EA in parts such as pages 6.51—53 identifies risks which make a strong argument for a regional, strategic EA, but does not discuss why that approach was not taken. Indeed, **a regional, strategic EA is critical before proceeding with any oil development in Block 31: The EA makes it clear that the current Petrobras project will unleash a process of accelerated oil development affecting the southern part of Block 31, where the Obe and Nashino oil reserves are located, spur development of the the ITT Block to the east, as well as inevitably create pressure on the Zona Intangible and its peoples living in voluntary isolation.** Yasuni National Park and Waorani traditional territory have already been seriously compromised and damaged by the Maxus Corporation development of Block 16 to the west.

**1.d.** Paragraph 21 of PS 1 requires that consultation with affected communities is to be "inclusive," "culturally appropriate," and tailored to "their decision making process." While the EA does document in detail consultations with both Kichwa communities outside the Yasuni Park affected by the project, and some Waorani within the Park will be impacted, i.e. the community of Kawymeno, **the consultation with the Waorani does not meet the criteria of "inclusive," "culturally appropriate" and tailored to "their [Waorani's] decision making process" because the two major Waorani tribal decision organizations were not involved in the consultation, let alone any decision making process.** As the comments of the Scientists Concerned for Yasuni make clear:

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<sup>\*</sup> EA, p. 6-53.

The Waorani leadership of ONHAE (Organización de la Nacionalidad Huaorani de la Amazonia Ecuatoriana) and AMWAE (Asociación de Mujeres Waorani de la Amazonía Ecuatoriana) had *not* been consulted about the details of the new project. This violates both the Ecuadorian Constitution and international law. The Ecuadorian Constitution guarantees the collective right of indigenous peoples to be consulted about oil projects on their lands (Article 84.5). Thus, the representative organizations must be part of the process. Internationally, ILO Convention 169—which Ecuador has ratified—states that governments should consult indigenous peoples in an appropriate manner and “in particular through their representative organizations” (Article 6). Instead, Petrobras has only consulted the single Waorani community located within Block 31, Kawimeno. Given that the drilling platforms and flow lines are located on what are thought to be ancestral Waorani territory, it is imperative that Petrobras and the Ecuadorian government consult and receive consent from the representative organizations ONHAE and AMWAE as well.\*

The letter of November 24 of the Environment Minister replies that ONHAE was *invited* to public consultations, not mentioning that the ONHAE did not participate in the consultation, not to speak of consent to the project. As detailed in the letter and comments of Finding Species and Save America's Forests to President-Elect Correa on January 8, 2006, Waorani laws and customs declare that the communal organizations ONWAE is the only entity with legal capacity to sign agreements in the name of the Waorani people.

Moreover, indigenous communities living in voluntary isolation in the Untouchable Zone and, probably, in the southern part of Block 31 are also clearly affected by potential cumulative and indirect impacts of the project, but there are no provisions for consultation with them in the EA and Management Plan.

Although the consultation does not appear to meet in critical respects the more general requirements of PS 1, the Equator Principles view consultation and consent of indigenous peoples to be of such importance in project risk mitigation that more stringent consultation requirements, in accordance with IFC PS 7 Indigenous Peoples, are required, which are discussed later in this brief.

**1.e. Paragraph 23 of PS 1 requires that "if the client anticipates ongoing risks to or adverse impacts on affected communities, the client will establish a grievance mechanism to receive and facilitate resolution of the affected communities' concerns and grievances about the client's environmental and social performance....It should address concerns promptly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities."**

**The EA and Management Plan make no mention of, and do not establish such a grievance mechanism. The Equator Principles view the establishment of a Grievance Mechanism to be of such importance in project risk mitigation that a separate Equator Principle, Principle 6, reiterates this requirement.**

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\* Scientists Concerned for Yasuni, "Comments to Project for Development and Production of Block 31: the Apaika and Nenke Oil Fields," Quito, 30 September 2006.

**2. The project and the EA also deviate from the requirements of PS 6, Biodiversity Conservation and Sustainable Natural Resource Management**, without any justification for such deviations. The project area is clearly a "critical habitat" as defined by paragraph 9 of PS 6, viz. "areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species....and areas having biodiversity of significant social, economic or cultural importance to local communities." **The project in its current form does not comply with the requirements of PS 6, paragraph 10, that "the client will not implement any project activities unless.....there are no measurable impacts on the ability of the critical habitat to support the established population of species described in paragraph 9...[and] there is no reduction in the population of any recognized critically endangered species."**

Of particular concern are the potential threats posed by the CPF to endangered and critically endangered species. The comments of the Scientists Concerned for Yasuni make this clear:

Any type of contamination or pollution at the CPF will be particularly damaging, given its proximity to the Tiputini River, home to rare mammals such as the globally endangered Giant Otter (*Pteronura brasiliensis*), the globally vulnerable (and in Ecuador critically endangered) Amazonian Manatee (*Trichechus inunguis*), the globally vulnerable (and in Ecuador endangered) Pink River Dolphin (*Inia geoffrensis*), and the Gray River Dolphin (*Sotalia fluviatilis*), which is also endangered in Ecuador. Demand for water at the CPF will also require the capture of considerable water from the Tiputini River (p. 4-48). The EIS concludes that the CPF will have "very high direct and irreversible negative impacts" (p. 6-16) on this area's sensitive environment.\*

There are fewer than 100 Giant Otters in the Yasuni Park area, and, according to an earlier letter and Technical Advisory Report of Scientists Concerned for Yasuni of November 25, 2004, "there is a confirmed group of Giant Otters in the Tiputini River very near the proposed construction zone for the Petrobras Road .Disturbances from construction and subsequent hunting may threaten this population. In addition, contamination from road runoff and oil spills is likely to occur in the Tiputini River from the proposed Petrobras road and pipeline, which history has shown are almost unavoidable even when rigorous safety policies are in place. Such contamination would threaten Giant Otter groups downstream." Moreover, "The Amazonian Manatee is among the most seriously threatened mammals in the Ecuadorian Amazon. While it has not yet been registered for Tiputini River, it is likely to use that river as a travel route. The major threats to this species currently are hunting, dynamite fishing, pollution from petroleum activities, and motor boats. These activities are all likely to increase in the rivers near the proposed Petrobras road as a result of human migration to the area"<sup>†</sup>

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\* Ibid.

<sup>†</sup> Scientists Concerned for Yasuní National Park, Technical Advisory Report: "The Biodiversity of Yasuni National Park, Its Conservation Significance, The Impacts of Roads Therein, and Our Position Statement," November 25, 2005, p. 37.

It should be emphasized that although the Petrobras road will not now enter the national park, the part of the road that has been constructed and the proposed site for the CPF will threaten similar impacts on the Tiputini River basin if the alternatives proposed by the Concerned Scientists for Yasuni (relocation of the CPF; decommissioning of the part of the road that has been constructed....) are not followed.

**3. The project and EA deviate from major requirements of PS 7 on Indigenous Peoples, particularly concerning avoiding adverse impacts where feasible and with respect to consultation and disclosure,** without any discussion of the justification for such deviations.

Paragraph 7 of PS 7 requires that the client identify "through a process of Environmental and Social Assessment all communities of Indigenous Peoples who may be affected by the project within the project's area of influence, as well as the nature and degree of the expected social, cultural (including cultural heritage), and environmental impacts on them, *and avoid adverse impacts wherever feasible.*" [emphasis added] The failure of the EA to consider and evaluate the feasible alternatives identified by the September 30, 2006 comments of Concerned Scientists for Yasuni—relocating the CPF away from the Tiputini River basin, using extended reach drilling instead of constructing the Apaïke Platform, decommissioning the 12.8 kilometer access road constructed by Petrobras in the Yasuni Park buffer zone, narrowing the width of the flow line right of way—also is a violation of PS 7.

The Equator Principles, with the view of identifying key areas of project risk, put a special emphasis on requiring robust procedures for consultation and disclosure, particularly with respect to Indigenous Peoples. These requirements are highlighted in Equator Principle 5 on Consultation and Disclosure, which (footnote 5 to the Equator Principles) states that "Consultation with Indigenous Peoples *must conform to specific and detailed requirements as found in Performance Standard 7.*" [emphasis added]

## **B. Consultation and Disclosure—Equator Principle 5**

Equator Principle 5 on Consultation and Disclosure reiterates some of the general consultation requirements of PS 1, viz. that consultation be "culturally appropriate," and that "for projects with significant adverse impacts on affected communities the process will ensure their free, prior informed consultation and facilitate their informed participation as a means to establish, to the satisfaction of the EPFI, whether a project has adequately incorporated community concerns." Since the affected groups are indigenous Kichwa and Waorani communities, as footnote 5 to EP 5 makes clear, additional specific detailed requirements in PS 7 for consultation with indigenous communities must also be met. These requirements are iterated in paragraph 9 of PS 7, *Information Disclosure, Consultation and Informed Participation:*

*The consultation process will ensure their free, prior, and informed consultation and their informed participation on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and facilitate implementation issues....In particular the process will include the following steps:*

- *Involve Indigenous Peoples' representative bodies....*
- *Be inclusive of both women and men and of various age groups in a culturally appropriate manner.*
- *Provide sufficient time for Indigenous Peoples collective decision-making processes.*

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- *Ensure that the grievance mechanism established for the project, as described in Performance Standard 1, paragraph 23, is culturally appropriate and accessible for Indigenous Peoples*

As detailed above in A.1.d. above, the consultation process has not met these requirements because the main Waorani representative body and collective decision making process effectively has not taken part in the consultation, viz. ONHAE (Organización de la Nacionalidad Huaorani de la Amazonia Ecuatoriana). Nor was the consultation process inclusive of women in a culturally appropriate manner, since the Waorani women's association, AMWAE (Asociación de Mujeres Waorani de la Amazonía Ecuatoriana) was also not consulted. Moreover, Ecuador has ratified ILO Convention 169, which also requires (Article 6) that indigenous peoples be consulted through their representative organizations. Nor is there any indication or mention of a Grievance Mechanism.

"Free, prior informed consultation" is required by both PS 7 and PS. 1. In the case of consultation with indigenous peoples, as footnote 5 to Equator Principle 5 makes clear, it is a requirement for which there is no room for "justified deviations" from "overall compliance" as in the case of overall environmental and social standards (Equator Principle 3). The Equator Principles cite the IFC Guidance Notes for the Performance Standards (while not adopting them as requirements en masse) as "useful points of reference when seeking further guidance or interpretation of the Performance Standards." Guidance Note 7 for PS 7 on Indigenous Peoples notes that free prior informed consultation is a process that "has lead to broad community support for the project among the affected communities of Indigenous Peoples." Broad community support does not mean unanimity, some individuals, groups or sub-groups may not be totally in accord, but any rational interpretation means that more than a majority of the people in affected communities and their representatives have been freely informed of the project in advance and have reached an understanding in support of the project with the project proponents. This, in fact, is a somewhat weaker standard than what is required by international and Ecuadorian law in ILO Convention 169, which requires "free, prior, informed consent," as pointed out in the September 30 comments of the Scientists Concerned for Yasuni.

We note that on July 12, 2005 the principal Huaorani tribal decision making organization, ONHAE, and the Huaorani women's organization, AMWAE, called for a ten-year moratorium on all oil development in Yasuni National Park, and denounced the role of

consulting firms to the oil companies, naming Entrix among others, for causing divisions among their people.\*

**The EA makes quite clear that there is a substantial risk of physical protests on the part of both the Kichwa and Waorani populations that would affect or "paralyze" the activities of the project.**<sup>†</sup>

**"It's a matter of actions which can affect the development of the project, this is due to the fact that the communities (above all Kichwas) consider that the negotiation undertaken with Petrobras Ecuador has been unjust (for more detail see section on the perception of relations between the company and the population), moreover because there exists a dissatisfaction with respect to the non-compliance with agreements on the part of the Company. The measures which the Kichwa inhabitants could undertake are: impeding the realization of any type of work or circulation of personnel in the communal territory (road Chiru Isla—CPF), including damaging installations or environmental measures ("puentes de dosel").**

**"The risk that the inhabitants of Kawymeno paralyze the activities of the Company is likewise probable given that the platforms are located in their hunting territory. The risk is qualified as "5B" [high], because it is very probably that the communities will undertake in fact actions although the consequences for the development of the project are limited."<sup>‡</sup>**

This is an extraordinary admission of opposition sufficiently strong among the indigenous communities such that it will lead to potentially violent interventions and attacks on project activities. What is most interesting, and disturbing, is that the EA concedes that such attacks and actions are probable, and indeed estimates that the potential ability of the Kawymeno inhabitants to significantly adversely affect the development of the project are "limited," but apparently more significant in the case of the Kichwa, since they may block work and circulation of personnel along the 12.8 kilometer road between the CPF (where it is currently planned to be situation) and Chiru Isla.

**It must be reiterated that alternatives identified by the September 30, 2006 comments of Scientists Concerned for Yasuni would at least mitigate these substantial and disturbing social risks: Not building the platform of Apaika (using Extended Reach Drilling instead), would reduce major impacts on hunting grounds of the Waorani inhabitants of Kawymeno; and relocating the CPF and decommissioning the road from Chiru Isla to the current site of the proposed CPF would avoid the risk of blockades on this road through Kwicha territory.**

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\* Letter of the Huaorani People to the Government of Alfredo Palacio, to the People of Ecuador and the World, for the Self-Determination of the Huaorani People, and Against Petrobras in Block 31, July 12, 2005.

<sup>†</sup> EA, para. 5.3.3.2.3, p. 5.32

<sup>‡</sup> Ibid.

### **C. Grievance Mechanism—Equator Principle 6**

**Equator Principle Six** states that "for all Category A, and as appropriate, Category B projects located in non-OECD countries....**the borrower will, scaled to the risks and adverse impacts of the project, establish a grievance mechanism as part of the project.**" **"The borrower will inform the affected communities about the mechanism in the course of its community engagement process and ensure that the mechanism addresses concerns promptly and transparently, in a culturally appropriate manner, and is readily accessible to all segments of the affected communities."** As mentioned above (para. A.1.e.) the establishment of a Grievance Mechanism is required by paragraph 23 of PS 1 for all Category A projects. The requirement for the establishment of a Grievance Mechanism for Category A projects is reiterated in PS 7 on Indigenous Peoples, paragraph 9.

As mentioned in Section A.1.e. and in Section B above, the EA and Management plan make no mention of a Grievance Mechanism. The absence of the Grievance Mechanism is compounded by the deficiencies in consultation and consent of affected communities, detailed above, as with respect to special requirements for consultation with, and consent by, affected indigenous communities.

**Even more serious, it is quite clear that the deficiencies in the consultation process have contributed to a situation, which the EA clearly articulates in paragraph 5.3.3.2.3, p. 5.32, where the grievances of the affected Waorani and Kichwa communities are likely to result in physical, potentially violent interventions to interfere with the development and operation of the project. The additional deficiency of the absence of a culturally appropriate Grievance Mechanism means that to proceed with, or finance this project in its current form would be highly irresponsible, fueling with reasonable likelihood precisely the kinds of project and reputational risks the Equator Principles are designed to avoid.**

### **D. Independent Review—Equator Principle 7**

**Equator Principle 7** requires that for all Category A projects "an independent social or environmental expert not directly associated with the borrower will review the Assessment, AP [Action Plan] and consultation process documentation in order to assist EPFIs' due diligence, and assess Equator Principles compliance."

The EA as it stands has not met minimal criteria of independence, and thus a thorough independent review would be necessary to comply with the Equator Principles. In fact, the preparer, Entrix, and the Technical Director, Ing. Miguel Aleman, are exactly the same parties who prepared the EA for the controversial OCP (Heavy Crude Pipeline) project. In the case of OCP and its EA, one of the founding Equator Banks, WestLB, which was the lead loan arranger for OCP, came under widespread national (in Germany) and international criticism for major deficiencies in the EA and the project. The protests against the widely acknowledged technical deficiencies of the EA were linked in significant part to the lack of

**independence of Entrix Ecuador from the oil industry it was supposed to evaluate.**

Robert Goodland, former chief Ecologist of the World Bank over 25 years, and principal author of many of the World Bank Group Safeguard Policies, researched and wrote an independent assessment of the Entrix OCP EA. He wrote that Entrix EA for OCP did not meet the World Bank Group's criteria of independence, noting also that the Minister of Finance of the German Land [state] of North Rhine-Westphalia—a shareholder in WestLB at the time—also questioned the independence of the EA.\* A major factor in the contention of lack of independence in the OCP EA situation was the fact that the general manager of Entrix Ecuador, Ing. Miguel Aleman, then and now, was also directly employed by OCP as its Environmental Coordinator. In the case of the EA commissioned by Petrobras for the development of Block 31, similar concerns are valid. Petrobras is a major owner (shareholder) of OCP, and indeed the oil from Block 31 will also be transported through the OCP.

Finally, one of the four founding Equator Banks, WestLB, expressly noted the following about OCP and its planning (referring implicitly, of course, to the Entrix prepared EA), in its first annual Sustainability Report in 2006:

"The construction of the OCP Pipeline in Ecuador, which was completed in 2003, is no doubt the most heavily criticized project financed by WestLB....WestLB agrees with the NGOs that this was a high-risk project. *In accordance with our currently applicable internal procedures, much greater attention would be paid to upstream and downstream activities such as the exploration of oil.*" [emphasis added]<sup>†</sup>

"Sensitized by the massive protests against the financing of the OCP Pipeline, we have attached growing importance to ensuring that new project financings comply with environmental and social aspects in accordance with the Equator Principles."<sup>‡</sup>

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\* Robert Goodland, "Independent Compliance Assessment of OCP with the World Bank's Environmental and Social Policies," 9 September 2002, para. 2.2. 'Independence of the EA,' pp. 8-9.

<sup>†</sup> WestLB, "New Thinking. Sustainability Report 2005," WestLB, 2006, p. 18.

<sup>‡</sup> Ibid.