ARIZONA JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW

VOLUME 22, NUMBER 1 SPRING 2005

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Ambiguity remains, however, as to the extent and content of the duty of consultation owed to indigenous peoples. In particular, there is much debate as to whether indigenous peoples' right to participation in decisions affecting them extend to a veto power over state action. Logically, the extent of the duty and thus the level of consultation required is a function of the nature of the substantive rights at stake. Thus the more critical issue underlying the debate over the duty to consult is the nature of indigenous peoples' rights in lands and resources. My remarks will focus on this question.

INDIGENOUS PEOPLES' RIGHT TO FREE, PRIOR, INFORMED CONSENT: REFLECTIONS ON CONCEPTS AND PRACTICE

Joji Cariño

Our topic is one that is debated intensely in many indigenous and grassroots communities around the world, in countries that include the Philippines, Canada, Papua New Guinea, Peru, India, and Australia, in the board rooms of the biggest oil and mining corporations, the World Bank and the International Finance Corporation, and in many bodies of the United Nations. In January 2005, under the auspices of the UN Permanent Forum on Indigenous Issues, an inter-agency workshop of UN bodies met in New York to examine their current policies and practices related to "free, prior, informed consent" ("FPIC"). Meanwhile, the UN Working Group on Indigenous Populations, under its standard-setting mandate on the rights of indigenous peoples, is drafting a legal commentary and guidelines for its implementation. FPIC is on the agenda of several international organizations: the Convention on Biological Diversity, the World Intellectual Property Organization (WIPO), and the World Trade Organization (WTO) in relation to access and benefits-sharing of biological resources and associated traditional knowledge, the World Conservation Union in relation to the establishment of parks and protected areas, and other multilateral banks and development and financing agencies with respect to their resettlement policies and other projects affecting indigenous peoples.

THE DRAFT WORLD BANK OPERATIONAL POLICY 4.10 ON INDIGENOUS PEOPLES: PROGRESS OR MORE OF THE SAME?

Fergus MacKay

Since the early 1980s, the World Bank Group (WBG) has adopted a number of policies – referred to as safeguard policies – designed to mitigate harm to indigenous peoples in WBG-financed projects. In 1981, it published a study entitled *Economic Development and Tribal Peoples: Human Ecologic Considerations*, which sought to provide guidelines for Bank operations. It states that the Bank should avoid "unnecessary or avoidable encroachment onto territories used or occupied by tribal groups," ruled out involvement with projects not agreed to by tribal peoples, requires guarantees from borrowers that they would implement safeguard measures, and advocates respect for indigenous peoples' right to self-determination.