

Human Rights and Ethics in the Oil and Gas Industry: Challenges of CSR.

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Human rights: from conquests to Rights

- The interrelation fields:
 - ◆ From the public field to the private field
 - ◆ The public interest and the common good

Human Rights: A concept under construction

"Human rights are civil, political, economic, social and cultural rights - inherent to humans, as well as those conditions and essential situations, recognized by the State to all its inhabitants, with no discrimination, in order to achieve a worthy life project"

Human rights of groups in a special situation

- Women and gender perspective.
- Indigenous peoples and afro-descendants
- Children and adolescents
- People with special challenges
- Refugees and displaced persons
- People with a sexual preference
- Senior citizens

HUMAN RIGHTS TRIAD



RULE OF LAW

- Social Contract
- Rights and Obligations
- Principle of Legality
- Balance of Powers
- Internal and external control
- Public and private rights and interests

THE PARADIGM OF THE WORTHY LIFE PROJECT

- The breaking of the rights classification paradigm (civil rights, collective rights - first, second and third generation-)
- The comprehensiveness and indivisibility of Human Rights

NEW CHALLENGES

- Sustainable human development
- Human safety
 - ◆ Food safety
 - ◆ Civil safety
 - ◆ Legal certainty
 - ◆ Environmental safety

Human Rights

■ ASSUMPTIONS

- ◆ Recognition of rights and protection mechanisms
- ◆ Objective guaranties framework
 - ◆ Rule of law
 - ◆ Democracy

INTERNATIONAL OBLIGATIONS AND PROTECTION

◆ THE UNITED NATIONS

◆ THE INTER-AMERICAN SYSTEM

TOWARDS A NEW IDEA OF STATE



Human Rights and Ethics in the Oil and Gas Industry

SUSTAINABLE HUMAN DEVELOPMENT

Toward a culture of development with ethics and dignity

- ✓ Rights and obligations and shared responsibility
- ✓ Corporate Social Responsibility
- ✓ Construction of a social dialogue

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Compliance with international standards

(UN: Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights)

- Right to equal opportunity and non-discriminatory treatment
- Right to security of persons (war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labor.
- Rights of workers
- To respect economic, social and cultural rights as well as civil and political rights
- Obligations with regard to consumer protection.
- Obligations with regard to environmental protection

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Social dialogue

Objectives

- Listen and achieve better comprehension of the social actors that affect or are affected by the conduct of the line of the business;
- Dialogue and exchange opinions about the two issues proposed for the social dialogue°
- Know all the expectations presented by the social players with regard to the issues proposed, and have them considered and validated by the participants, and duly stated in the report of the activity;
- Identify the priority actions that enable improved performance of the industry, for the gradual incorporation of the dialogue inputs into the business strategy.

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Social dialogue

BATCA COSTA RICA: A successful experience

- The methodology of social consultation.
- The role of the social Moderator (independence)
- Call for dialogue and legitimacy
- Transparency
- Indicators
- Monitoring and impact

Human Rights and Rights of Groups of People: Rights of indigenous peoples

ILO CONVENTION No. 169

- ✓ Respecting cultures and institutions and the right to continue existing and to determine their own course
- ✓ Right of consultation on legislative or administrative measures that affect them
- ✓ Participating in decisions about politics and programs that interest them
- ✓ Safeguard of people, institutions, property, labor, cultures and environment of tribal and indigenous peoples
- ✓ Values and social, cultural, religious and spiritual practices
- ✓ Recognition of customs and common law
- ✓ Right of property and possession of lands and special relation with the land or territories
- ✓ Establishment of adequate procedures to solve demands about lands

Previous consultation: General Statement, Scope

- a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
 - b) establish means by which these peoples can freely participate...at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programs that concern them;
 - c) Establish means for the full development of these people's own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures
(Art. 6 Convention No. 169)

Prior consultation in relation to indigenous territory

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources, or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of these activities.

Prior consultation: Right to veto or instrument of development?

- It is an exclusive right of the indigenous peoples affected or interested.
- VISION: COMPREHENSIVENESS AND INTERCULTURALISM: National development/development from indigenous cosmovision/Interrelated development
- STRATEGY: Creation of processes of recognition of rights
- METHODOLOGY: add-add/ win-win
- ASSUMPTIONS: "Respect for the rights of others"
- TOOLS:
 - Negotiation and mediation
 - Alternative Conflict Resolution Techniques

Prior Consultation: Characteristics

- It is more than a mere act of consultation.
- Is it a right to veto?
- Is it a formality to notify the consultation?
- It requires **prior information**, thus the term "prior and **informed**" consultation.
- Instances for **training** to determine **incidence**
- Generation of **wide debate**
- Identification of **benefits** and **participation** of them
- Identification of **damages** and measures for their **mitigation**
- **Translation** and **simultaneous interpreting** of all the information into the language of the indigenous people(s) to be consulted.

Effects of the approval of a project without Prior Consultation

- *nullity* due to a defect in the approval process. (procedural requirement)
- Unconstitutionality .
- Access to international organizations (Complaint before Committee of Experts of ILO (not exhaustion of resources))
- Access to Inter-American system