

Room 21  
1145 Wed.

Check against delivery



**Statement by Professor James Anaya  
Special Rapporteur on the rights of indigenous peoples**

Forum on Business and Human Rights

5 December 2012

Geneva



**Statement by Professor James Anaya,  
Special Rapporteur on the Rights of Indigenous Peoples**

Fellow panelists,

Participants and representatives of Members States,

Friends and colleagues,

It is a great pleasure to be able to participate this inaugural Forum of the Human Rights Council on business and human rights. I am grateful for this opportunity to share some of my thoughts on the implementation challenges for the Guiding Principles on business and human rights in the context of indigenous peoples. First, however, I would like to add my acknowledgement of the monumental work of Professor John Ruggie and others in launching the Guiding Principles. I join in celebrating that the development of the Guiding Principles, their endorsement by the Council, the establishment and work thus far of the working group to advance their implementation, and this Forum open new and important possibilities for advancing human rights within the many contexts reached by business. Of course as many at the Forum have already remarked, and indeed the reason we are gathered here is that, there are many challenges ahead, and in many ways the work is just beginning.

In my work as Special Rapporteur on the rights of indigenous peoples, I have been confronted by numerous instances of alleged human rights violations in connection with business activities, especially in the context of extractive industries that operate on or near indigenous territories. Thus I have dedicated significant attention to issues that are at the intersection of business and the human rights of indigenous peoples. My 2010 report to the Human Rights Council focused on the responsibilities of corporations in relation to indigenous peoples. And my last two reports to the Council are part of an ongoing study on the issues faced by indigenous peoples that arise from extractive industries. Excerpts from these reports are compiled in a conference room paper and available on the Forum website.

In my examination of issues related to business and human rights, I have observed a high level of acceptance by States and business enterprises of the Guiding Principles and their “protect, respect and remedy” framework. However, I have noted significant ambiguity about the extent to or manner in which the Guiding Principles relate to the standards of human rights that specifically concern indigenous peoples. I have observed a pervasive lack of understanding, much less conviction, that the human rights that states are to protect in the context of business activities, and that companies are to respect, include the specific rights of indigenous peoples, in particular those that are affirmed in the United Nations Declaration on the Rights of Indigenous Peoples.

I believe it should no longer be questioned that the State’s protective role entails ensuring a regulatory framework that fully recognizes indigenous peoples’ rights over lands and natural resources and other rights that may be affected by business activities; that mandates respect for those rights both in all relevant State administrative decision-making and in corporate behaviour;

and that provides effective sanctions and remedies when those rights are infringed either by Government or corporate actors. Such a regulatory framework requires legislation or regulations that incorporate international standards of indigenous rights and that make them operational through the various components of State administration that govern land tenure, mining, oil, gas and other natural resource extraction or development. By and large, however, regulatory frameworks of this kind are still lacking in States across the globe.

For their part, as affirmed by the Guiding Principles, business enterprises have an independent responsibility to respect human rights. And as I have detailed in my most recent report to the Council, and as indicated in the comment to article 12 of the Guiding Principles, the rights that corporations should respect include the rights that are specific to indigenous peoples. These rights are articulated not just in the Declaration on the Rights of Indigenous Peoples, but also in ILO Convention No. 169, provisions of various other treaties, including the Convention on Biological Diversity, and several authoritative international decisions and statements interpreting provisions of core human rights treaties.

The Guiding Principles clarify that the corporate responsibility to respect human rights “exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations”. This independence of responsibility notwithstanding, I have learned of numerous instances in which business enterprises engaged in extractive industries do not go further than compliance with domestic laws or regulations, regardless of the ineffectiveness of those laws and regulations for the protection of indigenous rights. Corporate attitudes that regard compliance with domestic laws or regulation as sufficient should give way to understanding that fulfilment of the responsibility to respect human rights often entails due diligence beyond compliance with domestic law.

My examination of the issue confirms that there is need for change in the current state of affairs if indigenous rights standards are to have a meaningful effect on State and corporate policies and action as they relate to indigenous peoples. An initial step towards such change would be greater common understanding among indigenous peoples, governmental actors, businesses enterprises, and others about the content of indigenous peoples rights and the means of their implementation. Without such understanding, the application of indigenous rights standards will continue to be contested or ignored, and indigenous peoples will continue to be vulnerable to serious abuses of their individual and collective human rights.

I commend the work of the Council’s Expert Mechanism on the Rights of Indigenous peoples to advance understanding of indigenous rights in the context of business activities, including in relation to the Guiding Principles. I believe we will hear more about this work from the Chair of the Expert Mechanism, Chief Willie Littlechild, at the plenary of the Forum later today.

Also towards this end, I have carried out a series of meetings with Governments, indigenous peoples, and representatives of business enterprises, in order to listen carefully and draw extensively on views and experiences that all stakeholders share with me on this issue. I would like to warmly thank the indigenous organizations, NGOs, business enterprises, and Government and parliamentary actors that have facilitated or participated in these meetings.

As a complement to these meetings, in the coming weeks I will launch an online consultation forum organized around specific questions or issues related to extractive industries. Through this web based forum, indigenous peoples and others will have the opportunity to submit information on their experiences with extractive industries, as well as to respond to specific questions. I will also continue to gather and analyze empirical information on specific examples of natural resource extraction activities affecting indigenous peoples during my ongoing work examining cases of alleged human rights violations and in carrying out country visits.

I hope that this work contributes to providing much-needed orientation on the practical implementation of the Guiding Principles. Especially in the context of extractive industries, I believe that new and different models and business practices need to be examined, models that are more conducive to indigenous peoples' self-determination and their right to pursue their own priorities of development. Such models could include genuine partnership arrangements between indigenous peoples and corporations, or even models in which indigenous peoples develop their own extractive business enterprises, as many have already done. I intend to explore these possibilities further in my final report to the Human Rights Council.

I would like to conclude by expressing my gratitude for the opportunity to address those present today, and I look forward to our discussion.

Thank you all for your kind attention.