

Recommendations from Indigenous Peoples Links (PIPLinks) to the Working Group on the Establishment of a Work Programme

Working Group on the issue of Human Rights and Transnational Corporations and other Business Enterprises:

United Nations,
Geneva, Switzerland

Via email: wg-business@ohchr.org

8 December 2011

Dear Working Group and members,

Indigenous Peoples Links (PIPLinks) welcomes the final report of the UN Special Representative on Business and Human Rights, Professor Ruggie, as an important step to greater transparency and accountability, and therefore towards improved human rights practice of corporations. We further welcome the establishment of the Working Group, and look forward to cooperating with it to facilitate an improved awareness of human rights obligations and responsibilities of all parties, and to guarantee the strengthened protection of these rights in practice.

Indigenous Peoples Links exists to uphold and promote the collective and individual human rights of Indigenous Peoples and other land-based communities. We have extensive experience monitoring the activities of corporations, particularly in the extractive industries sector, with regard to their impact on the lives and rights of Indigenous Peoples. We note the identification of the UN Declaration on the Rights of Indigenous Peoples as a vital framework in upholding and protecting the rights of Indigenous Peoples in their interactions with corporations seeking to operate within their territories.

Studies point to serious human rights violations arising from the activities of corporations in indigenous peoples territories. Professor Ruggie noted that among submissions he received “the extractive sector – oil, gas, and mining – utterly dominates this sample of reported abuses”.¹ The UN Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya, in his latest report to the Human Rights Council has also drawn attention to the scale and seriousness of the problems surrounding extractive industries, and has announced they will be a focus for the rest of his mandate.²

1 John Ruggie's Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, U.N. Doc. E/CN.4/2006/97 (2006) Para 25 states '*The extractive sector - oil, gas and mining - utterly dominates this sample of reported with two thirds of the total.... The extractive industries also account for most allegations of the worst abuses, up to and including complicity in crimes against humanity. These are typically for acts committed by public and private security forces protecting company assets and property; large-scale corruption; violations of labour rights; and a broad array of abuses in relation to local communities, especially indigenous people.*'

2 Report of the Special Rapporteur on the rights of Indigenous Peoples to the Human Rights Council (Summary of activities), A/HRC/18/35 (11 July 2011)

Taking account of this context we make the following recommendations:

1. **Adopt a particular focus on Indigenous Peoples:** Indigenous Peoples are frequent and disproportionate victims of corporate activities, most particularly those of extractive industries sector corporations. There are many reasons for this, including the wide distribution and large number of indigenous populations, the systematic marginalization and discrimination they frequently suffer and their heavy dependence and close relationship with their lands and resources. By one estimate, as much as 50% of the gold produced between 1995 and 2015 will come from indigenous lands³, and in 2009 the European Commission recorded that approximately 70% of uranium used in nuclear reactors is sourced from the homelands of indigenous minorities worldwide.⁴ We believe there is a priority need for the Working Group to give special attention to the experiences and informed recommendations of Indigenous Peoples.
2. **Adopt a particular focus on the most problematic business sectors:** We suggest that the Working Group adopt an approach to assessing the inputs it receives that ensures that those business sectors that are the source of high levels of complaints and concerns are given particular and in-depth attention and analysis. As noted above, we believe this would lead to an initial focus on the extractive industries sector.
3. **Capitalize on existing UN expertise:** We recommend that, in consideration of the guiding principles for its work, the Working Group make every effort to build upon and use the expertise previously developed and expressed in documents, such as the UN Declaration on the Rights of Indigenous Peoples. We also urge that the Working Group establish and maintain close working relationships with the UN Special Rapporteur on the Rights of Indigenous Peoples, the Expert Mechanism on the Rights of Indigenous Peoples and the UN Permanent Forum on Indigenous Issues. In addition we urge that the Working Group draw on materials from the former Working Group on Indigenous Populations, the UN Committee on the Elimination of Racial Discrimination (CERD) and other bodies within the UN system where issues of controversial interaction between Indigenous Peoples and corporations are documented
4. **Engage with compliance mechanisms:** We recommend that the Working Group develop a relationship with international oversight bodies, such as the National Contact Points of the OECD Guidelines on Multinational Enterprises, the World Bank Group Office of the Compliance Advisor/Ombudsman and other non-UN avenues of complaint and redress. Their focus on the practices of corporations, as opposed to state responsibility would maximise the impact of the Working Group in ensuring rights compliant business operations.
5. **Provide a mechanism for Indigenous Peoples input:** Recognising the third pillar of the Framework for Business and Human Rights, we urge the Working

3 Roger Moody, *Rocks and Hard Places*, Zed Books, 2007

4 Letter from Gundjeihmi Aboriginal Corporation to UN Secretary General, April 2011

Group to ensure that Indigenous Peoples who have expert submissions to make towards improved practice are facilitated to make submissions. In order for this to happen a fund should be established, or existing funds expanded, to provide for the attendance of Indigenous Peoples to meetings of the Working Group for the submission of papers and statements. Affected Indigenous Peoples should also be eligible to apply, where necessary, for grants to assist in the conduct of research and documentation for submission to the Working Group and that the Working Group encourage cooperation with concerned NGOs to develop and fund such opportunities.

6. **Facilitate information sharing:** We suggest that the Working Group develops a working practice that encourages the sharing of relevant updates and reports of current experience from Indigenous Peoples and others affected directly by corporate operations as well as from corporations, NGOs and academic experts.
7. **Engage with CERD recommendations on extraterritorial responsibility:** We urge the Working Group note the relevant findings and recommendations of the CERD concerning the responsibility of business enterprises operating beyond the boundaries of their country of registration and work in cooperation with the CERD to support the development of a general recommendation on this issue.⁵ Further, the Working Group should cooperate with the home states of transnational corporations and concerned bodies within those states to encourage the development of expert independent studies and recommendations regarding policy frameworks to improve corporate accountability.
8. **Focus on human rights compliant best-practice:** Conscious of the mandate of the Working Group to consider and draw attention to examples of best practice, and aware of the current deficit in human rights protection in relation to corporate activities and the potential threat this poses to the vulnerable, we urge the Working Group to pay particular attention to practice that:
a) consistently adheres to existing human rights obligations including those identified in the UN Declaration on the Rights of Indigenous Peoples;

5 The CERD has made recommendations with regard to the extraterritorial responsibilities of business enterprises with regard to Canada (CERD Concluding Observations 2006), CERD/C/CAN/CO/18 para '17. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions (arts 2. 1(d)d, 4 (a) and 5(e))In light of article 2.1 (d) and article 4 (a) and (b) of the Convention and of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in Canada accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in Canada on indigenous peoples abroad and on any measures taken in this regard.' A similar recommendation was made to the U.S. CERD/C/USA/CO/6 para 30; (CERD Concluding Observations 2007), Norway CERD/C/NOR/CO/19-20 para 17 (CERD Concluding Observations 2011) and UK CERD/C/GBR/CO/18-20 para 29 (CERD Concluding Observations 2011)

- b) provides adequate and sustained protection for vulnerable groups;
- c) draws attention to inadequate practices which fail to provide such protection, in particular where these practices may be presented as 'best practice';
- d) concentrate some attention on the identification and development of minimum standards consistent with the effective protection of human rights, and;
- e) suggest criteria for effective independent monitoring and regulation of corporate practice in line with these standards.

9. **Engage with and provide guidance to the investment sector:** We recommend that the Working Group engage with the investment community. It can be both a source of inputs and a sector that might influence outcomes for the better. We suggest that the Working Group should work with investor groups, including for example the banks who have signed up to the Equator Principles, and ethical investment companies to inform investor communities of their human rights responsibilities and develop guidance to safeguard against investor contribution towards human rights violations.
10. **Provide guidance on regulatory standards:** We suggest that the Working Group identify some key elements of systems to strengthen human rights protection in the context of business activities and develop recommendations for regulatory standards which could give effect to these.