

ADDRESSING THE HUMAN RIGHTS IMPACTS OF BUSINESS AND CORPORATE ACTIVITIES AT THE UNITED NATIONS

The Guiding Principles on Business and Human Rights: *Implementing the United Nations “Protect, Respect and Remedy” Framework*

Corporate impacts on human rights, including the rights of Indigenous Peoples, has been a matter of discussion and concern at the United Nations (UN) for many years. The UN Guiding Principles on Business and Human Rights were adopted unanimously by the UN Human Rights Council (HRC) in 2011. Developed over several years of discussion by John Ruggie, the Special Representative of the UN Secretary General with the input of States (countries), business entities, civil society and Indigenous Peoples, the Guiding Principles affirm:

- ❖ The duty of States to ***protect*** human rights and prevent violations by third parties including businesses
- ❖ The responsibility of businesses and corporations to ***respect*** human rights
- ❖ The need for States to ensure that victims of violations have access to an effective ***remedy***

The UN Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises

The UN Working Group on the issue of human rights and transnational corporations and other business enterprises (the Working Group) was created by the **UN Human Rights Council (HRC)** in 2011 to promote, disseminate and implement the UN Business and Human Rights Principles. The Working Group is composed of five (5) independent experts, with balanced geographical representation, and is currently chaired by Mr. Pavel Sulyandziga, an Udege Indigenous representative from Russia. The mandate of the Working Group is to:

- Make recommendations to all concerned actors
- Promote capacity building
- Where requested, provide advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights
- Conduct country visits (for example to the United States in 2014 and Mexico in 2016)
- Work in close cooperation and coordination with UN and regional human rights bodies and organizations
- Report annually to the HRC and General Assembly
- Guide the work of the annual UN Forum on Business and Human Rights
- Facilitate the exchange and promotion of good practices and lessons learned
- Accept allegation letters from individuals and groups about business-related human rights abuses. If it finds the allegations to be accurate, the Working Group sends communications to the respective State governments, often together with other UN mechanisms including the UN Special Rapporteur on the Rights of Indigenous Peoples. It can also directly engage with businesses named in allegation letters.



Pavel Sulyandziga and IITC Legal Counsel Danika Littlechild at the Indigenous Peoples Caucus, 3rd UN Forum on Business and Human Rights, December 2014, Geneva

The Working Group also develops Thematic Reports on issues of particular importance to their mandate. Its first Thematic Report addressed the adverse impacts of business on the rights of Indigenous Peoples through the lens of the UN Guiding Principles (A/68/279). The report concluded that Indigenous Peoples are disproportionately and adversely affected by business activities and should be protected against abuses. It called for more work to be done on judicial and non-judicial mechanisms, extraterritorial remedies and Indigenous dispute resolution modes.

The UN Business and Human Rights Forum

Since 2012, the UN has held an annual **Forum on Business and Human Rights**, guided and coordinated by the Working Group. Indigenous Peoples have participated in each session of the Forum to raise their concerns about the violations of their rights as a result of the actions of corporations and other businesses. A key element of Indigenous Peoples' participation in the Forum has been to assert the principle of Free Prior and Informed Consent, which applies to development, toxic contamination and forced relocation among other activities as affirmed in the UN Declaration on the Rights of Indigenous Peoples. They have also presented specific violations of this right by businesses and made recommendations for effective implementation and remedies.

Other UN Standards and Bodies have affirmed the human rights obligations of States related to Businesses and Corporations impacting Indigenous Peoples' Rights and Lands

The UN Declaration on the Rights of Indigenous Peoples State affirms States' obligation to ensure that Indigenous Peoples' Free Prior and Informed Consent is obtained in several provisions including:

***Article 10:** Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned...*

***Article 29, paragraph 2:** States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.*

***Article 32, paragraph 2:** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*

Consent is also a right affirmed in legally-binding Nation to Nation Treaties including the 1868 Ft. Laramie Treaty between the Great Sioux Nation and the US, and Treaty No. 6 concluded between the Cree and other Nations and "her Majesty the Queen of Great Britain and Northern Ireland" and then legally inherited by Canada. Treaty rights are affirmed in Article 37 of the UN Declaration and in several preambular paragraphs.

The UN Committee on Racial Discrimination (CERD), the Treaty-monitoring body for the UN Convention on the Elimination on all forms of Racial Discrimination, in its reviews of Canada in 2007 and 2012, and the US in 2008 and 2014, affirmed US and Canadian obligations to prevent actions by corporations registered by these countries which could have an adverse effect on the rights of Indigenous Peoples outside their borders.

Currently, there are ongoing negotiations for a new international legally-binding treaty on business and human rights, being carried out by the CHR through an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIWG).



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