United Nations Expert Mechanism on the Rights of Indigenous Peoples Eighth session July 20 – 24, 2015

Agenda Item 4: Panel Discussion on Indigenous Peoples Human Rights in relation to business enterprises

Submitted by the International Indian Treaty Council (IITC), Presented by Andrea Carmen

Thank you Mr. Chairman.

The recognition of corporate responsibility to respect Human Rights, including the Rights of Indigenous Peoples, as well as the State Duty to respect the rights of Indigenous Peoples with regards to the activities of corporations being carried out in their respective countries, is an example of the ongoing evolution in the understanding of human rights obligations by the UN System.

We would like to highlight three key areas in relation to this agenda item that intersect with other areas of focus being addressed at the 8th Session of the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP).

First, we call upon the EMRIP to address in its report and advice on this theme the continued appropriation, commodification and patenting of traditional plant knowledge, genetic resources and seeds by multinational corporations. These elements are a vital aspect of Indigenous Peoples cultural heritage, as recognized by Article 31 of the UN Declaration on the Rights of Indigenous Peoples, as well as their spiritual identities, food sovereignty and right to food, health, and local economics and in many cases, spiritual identity. This area, the corporate appropriation, patenting and genetic modification of Indigenous Peoples' traditional seeds, food and medicinal plants and animals and related cultural knowledge, has not adequately been addressed in UN discussions on human rights and business enterprises and is not adequately reflected in the EMRIP's current study on Rights to Cultural Heritage.

Secondly, we highlight the devastating human rights impacts of the international traffic, import and export of chemicals, and in particular pesticides, that have been prohibited for use in the exporting states. Although this practice is currently permitted by States as well as the United Nations Rotterdam Convention, it must be condemned and halted without delay as an example of environmental violence that is killing, sickening and disabling our children and undermining our reproductive health as well as the overall health of Indigenous Peoples in many countries.

The severe and pervasive impacts of the practice on Yaqui Indigenous Children in Sonora Mexico were noted by the UN Committee on the Rights of the Child (CRC) in its country review of Mexico in May of this year.

Under the heading Environmental Health, the CRC called upon Mexico to:

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Comment [1]:

- (a) Assess the impact of air, water, soil and electromagnetic pollution on children and maternal health as a basis to design a well-resourced strategy at federal, state and local levels, in consultation with all communities and especially indigenous peoples, to remedy the situation and drastically decrease the exposure to pollutants;
- (b) Prohibit the import and use of any pesticides or chemicals that have been banned or restricted for use in exporting countries;
- (c) Further examine and adapt its legislative framework to ensure the legal accountability of business enterprises involved in activities having a negative impact on the environment, in the light of its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights. (CRC/C/MEX/CO/4-5 para. 51 52, June 8, 2015)

It is important to note, as a third matter of importance for the EMRIP's consideration of this topic, that other Treaty Bodies have also underscored the State responsibility in this regard in the context of their legally binding obligations. For example, the UN Committee on the Elimination of Racial Discrimination (CERD) addressed the ongoing practice by the United States of the manufacture and export of pesticides, which are not allowed to be used in its own country, in its periodic country reviews of the United States in both 2008 and 2014. In its Concluding Observations addressing the United States in August 2014, the CERD called upon the US to:

Take appropriate measures to prevent the activities of transnational corporations registered in the States Party which could have adverse effects on the enjoyment of human rights by local populations in other counties, especially by Indigenous Peoples and minorities (CERD/C/USA/CO/7-9, para. 10 (d), August 29, 2014).

The CERD also made similar recommendations to Canada in its Concluding Observations on the review of that country in 2007 and 2012 addressing the impacts of mining by corporations licensed by Canada on the rights of Indigenous Peoples in Guatemala, Philippines, Mexico, Papua New Guinea, United States and many other countries around the world.

Finally Mr. Chairman, we address in this context a key aspect of follow up to the World Conference on Indigenous Peoples Operative Paragraph 27 (WCIP OP 27), which we will comment upon further at both a side event and interventions under item 7 tomorrow. Indigenous Peoples' sacred ceremonial items, cultural items and ancestral remains must not continue to be used as commodities for trade and sale by business enterprises, whether they are being carried out by private individuals, universities, private museums, non-profit or profit corporations, or other business enterprises. This practice is a clear violation of a number of International Standards including Articles 11, 12 and 31 of the UN Declaration on the Rights of Indigenous Peoples and both UN Human Rights Covenants, as well as WCIP OP 27.

In closing, we call on the EMRIP to include in its advise to the Human Rights Council on this topic that Indigenous Peoples' cultural heritage including seeds, medicinal foods, plants and

animals, traditional knowledge, cultural and ceremonial items and human remains must not be used, sold or traded by business enterprises of any kind without the free prior and information consent (FPIC) of the Indigenous Peoples concerned. In addition, in order to respect and uphold the recognized and inherent rights of Indigenous Peoples, cultural items, knowledge and heritage currently held by business enterprises without FPIC must be immediately returned and repatriated to the Indigenous Peoples concerned.

Thank you.