

Business and Human Rights: Indigenous Peoples' Experiences

with Access to Remedy



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Briefing paper and summary of forthcoming publication for AIPP, CAO, ENIP, IWGIA, PIPLinks, FPP side event at the UN Forum on Business and Human Rights

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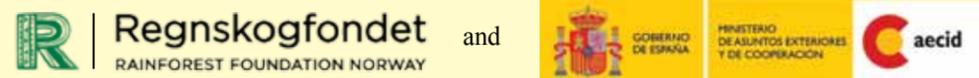
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Briefing paper and summary of forthcoming publication¹ for AIPP¹, CAO², ENIP³, IWGIA⁴, PIPLinks⁵, FPP⁶ side event at the UN Forum on Business and Human Rights

BACKGROUND

The UN Guiding Principles on Business and Human Rights were endorsed by the Human Rights Council (HRC) in 2011. They consist of three pillars aimed at ensuring compliance with human rights in the context of corporate activities. The first pillar is specifically targeted at States and reaffirms their duty to protect human rights, including those rights affirmed in specific standards addressing vulnerable groups such as indigenous peoples. It also addresses State responsibility to ensure that business actors respect these rights.

The second pillar addresses the corporate responsibility to respect human rights which exists independently of State actions and duties. This responsibility relates to all human rights, including the rights of indigenous peoples, and requires that corporations avoid causing or contributing to adverse human rights impacts by preventing and mitigating the human rights-related risks that are linked to their activities or business relationships. Realizing this requires that they have human rights policies and human rights due diligence processes in place which affirm their commitment to respecting human rights, including indigenous peoples rights as affirmed under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169. This is required to enable them to identify and account for potential impacts on human rights and prevent and mitigate adverse impacts prior to their occurrence through compliance with the principle of free prior and informed consent (FPIC) and other indigenous rights based safeguards. Where violations do occur they must provide for, or cooperate in, their remediation through legitimate processes. This briefing paper focuses on the third pillar of the Guiding Principles - access to remedy - and provides a summary of a forthcoming book on Access to Remedy - Business and Indigenous Peoples' Rights.

The third pillar of the Guiding Principles identifies the measures to be taken by both States and businesses in order to facilitate access to effective remedies. A range of mechanisms are addressed including State based judicial and non judicial mechanisms, non-State based judicial mechanisms (such as regional or international courts), and non-judicial mechanisms, including operational level grievance mechanisms which corporations may implement, or in which they may participate. The need for greater attention to be directed to this issue of access to remedy has been highlighted by the HRC in its 2014 resolution requesting the Working Group on Business and Human Rights to:

¹ Asia Indigenous Peoples Pact (AIPP), www.aippnet.org.

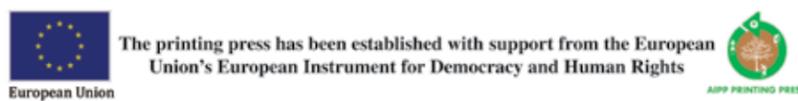
² Andean Coordinator of Indigenous Organizations, www.coordinadoracaio.org

³ European Network on Indigenous Peoples, www.enip.eu

⁴ International Work Group for Indigenous Affairs, www.iwgia.org

⁵ Philippine Indigenous Peoples Links, www.piplinks.org

⁶ Forest Peoples Programme, www.forestpeoples.org



“launch an inclusive and transparent consultative process with States in 2015, open to other relevant stakeholders, to explore and facilitate the sharing of legal and practical measures to improve access to remedy, judicial and non-judicial, for victims of business-related abuses, including the benefits and limitations of a legally binding instrument ... [and] ... include as an item of the agenda of the Forum on Business and Human Rights the issue of access to remedy, judicial and non-judicial, for victims of business-related human rights abuses, in order to achieve more effective access to judicial remedies”.ⁱⁱ

Access to remedy has many dimensions in context of the protection of and respect for indigenous peoples' rights. From the geographical perspective remedial mechanisms span the local, national, regional and international levels, while from the procedural perspective they range from mediation style dispute resolution processes up to judicial proceedings. Issues which arise consequently range from the effectiveness of international and State based judicial and non-judicial mechanisms, to respect for indigenous peoples' customary institutions, processes and laws.

Indigenous peoples generally lack access to effective remedies through State based judicial mechanisms in the context of human rights harms caused by natural resource extraction and infrastructure projects. This is due in large part to significant practical and legal obstacles which they face when attempting to access courts. “State based non-judicial mechanism tasked with addressing indigenous peoples rights frequently tend to lack sufficient capacity or awareness of indigenous peoples' rights. Access to mechanisms at the regional and international levels is also challenging for most indigenous communities, and the lack of enforcement powers of these mechanisms limits their effectiveness.

In light of this reality the potential of operational level grievance mechanisms has gained increased attention. These mechanisms range from those established and run by companies, to corporate engagement with indigenous peoples' own dispute resolution systems under their customary institutions and laws. However, many questions remain as to the potential of these mechanisms to effectively address the core concerns of indigenous peoples as well as how they should relate to the broader landscape of judicial and non-judicial mechanisms.

Given the current ineffectiveness of remedial mechanisms and the unacceptable extent and nature of violations of indigenous peoples' rights which occur in the context of extractive industry and infrastructure projects, there is an urgent need for research around access to remedy which is grounded on the experiences and perspectives of indigenous peoples. This is a necessary starting point in order to attempt to bridge the huge gap between access to remedy requirements affirmed in international human rights standards, such as the Guiding Principles and the UNDRIP, and the reality on the ground as experienced by indigenous peoples. The forthcoming book contributes to addressing this gap through case studies in Asia, Africa and Latin America which present indigenous peoples' perspectives on human rights harms and examine their experiences engaging with a broad spectrum of mechanisms in the pursuit of access to remedy. This briefing paper provides an overview of the book chapter addressing Asia and Latin America.

FINDINGS

Chapter 1 : Operational level grievance mechanisms and indigenous peoples' rights

This chapter addresses the criteria for effective operational level grievance mechanisms in indigenous territories and reviews four experiences of indigenous communities with such mechanisms. The outcome of the Guiding Principles' 2011 pilot project in relation to Cerrejón's grievance mechanism in the territory of the Wayuu in Colombia demonstrates how internal company acceptance of the operational level grievance mechanism can be realized. However, it points to the importance of ensuring indigenous participation in the development of the mechanism if it is to have legitimacy and relevance for indigenous rights holders. The indigenous perspectives on this important case are the subject of chapter two.

The grievance mechanism which Sakhalin Energy operates in the territory of indigenous communities in Russia's far-east highlights the importance of culturally appropriate mechanisms that address all of the issues relevant to indigenous peoples from the outset of operations. It also illustrates the role which donor agency requirements can play in promoting corporate respect for indigenous rights. Concerns which arise are the mechanism's ineffectiveness in addressing power imbalances and the extent to which the company has benefited from and has potentially been (at least tacitly) complicit in the actions of the regional authorities which have served to undermine indigenous self-determination.

The experience of the Subanon of Mt Canatuan in the Philippines with TVIRD is positive in so far as it demonstrates the potential for corporate engagement with indigenous peoples' customary dispute resolution and judicial systems. However, it also raises concerns around the failure of corporations and States to provide adequate reparations for violations of indigenous rights. It also points to a common issue of the recognition of indigenous structures only after irreparable harm has been caused and in a context where affording such recognition helps the company to realize its plans to expand into other areas.

Finally, the experience of the woman and men whose rights were seriously violated by Barrick Gold Corporation's security in Papua New Guinea and Ghana raise major concerns around the use of legal waivers under local level operational grievance mechanisms which foreclose an individual's access to more meaningful judicial avenues of redress. The key learning from the case is that such waivers are inconsistent with the objectives of the Guiding Principles and human rights standards and can serve to deny the rights to redress and justice.

Chapter 2 : Coal mining in La Guajira, Colombia

The case study examines the human rights impacts which the Carbones del Cerrejón (Cerrejón) mining project has had on the Wayuu communities over the course of its 30 years of operations in their territories, and the potential for the Guiding Principles to reduce those impacts and provide remedies to the Wayuu. Cerrejón's current concession expires in 2034. It is owned by subsidiaries of Anglo American, BHP Billiton and Glencore and is one of the biggest open cast coal mines in the world, occupying an area of 800 square kilometres in the municipalities of Albania, Hatonuevo, Maicao y Barrancas, La Guajira, in the northeast Atlantic coast of the Colombia. It currently supplies 60% of Colombia's coal, producing 32 million tonnes of coal per annum. It necessitated the construction of a 150km train line through the Wayuu territory and the largest coal port in Latin America to facilitate its export of coal to elsewhere in the continent and to Europe.

The Wayuu territories are home to numerous extractive and tourism megaprojects, all of which have had major negative impacts on their environment and cultural and physical well-being. The communities have also suffered major human rights abuses, including forced displacement, as a result of paramilitaries who control much of the economic activity in the region. The case study describes the extensive impacts which Cerrejón has had on the Wayuu and afro-descendant peoples' rights. These include adverse impacts on health and the environment, cultural rights, subsistence and conditions of life, physical integrity, and on their self government and territorial rights, including consultation and participation rights which are affirmed under ILO Convention 169 and the UNDRIP. Having described the historical and on-going issues which six Wayuu and seven afro-descendant communities are facing as a result of Cerrejón, and the absence of adequate compensation or reparations, the chapter suggests that there are two parallel realities in la Guajira. One is that presented by the communities - a reality of unremedied wrongs, on-going harms, including major environmental problems impacting on water and food and contributing to extreme poverty and huge discontent, including among resettled communities. The other reality, presented by Cerrejón, is one in which the company has contributed to the wealth of Guajira and where it paints a picture of a world in which there are no problems as it takes care of everything, including through its policy commitment to respect the Guiding Principles.

However, despite the explicit reference to international indigenous rights standards in the Guiding Principles and the clarification by a range of human rights bodies that this means corporations must respect the rights affirmed in ILO Convention 169 or the UNDRIP, Cerrejón does not include a single reference to the rights of indigenous peoples in its policies. This is the case even though its entire operation is located in indigenous peoples' territories. From the perspective of the Wayuu its actions to date demonstrate inadequate efforts to avoid negative impacts on their rights, and the absence of due diligence and remediation, with even resettled communities dissatisfied with the outcomes.

Cerrejón has plans to further expand its operations which would necessitate the rerouting of the river Ranchería and result in further major impacts on the Wayuu. It is attempting to proceed with these plans despite the fact that it has not yet adequately addressed the serious legacy and on-going issues associated with its existing operations or provided remedies or guarantees of non-repetition. The case demonstrates the range and nature of rights violations which can arise in contexts where the complaints of indigenous and tribal communities go unaddressed over extended periods by both the State and companies. In doing so, it highlights not only the need for indigenous rights due diligence prior to any further expansion plans, but also the fundamental importance of recognizing legacy impacts and addressing them in a manner that is satisfactory to the affected indigenous communities.

Chapter 3: Oil Exploitation in the Peruvian Amazon

The case study focuses on difficulties which 100 Amazonian indigenous communities have faced in accessing reparation for violations of their rights arising from the contamination of the Pastaza, Tigre, Corrientes and Marañón rivers (all of which are tributaries of the Amazon) in Loreto, Peru where Pluspetrol conducts oil exploitation. A particular feature of the case is the extent to which the representative organizations of the affected communities coordinated their actions and raised their issues before various mechanisms of the State and the international system. The contamination is a result of oil exploitation in lots 1AB and 8, which have been operational for 40 years and are currently operated by Pluspetrol, a company which has Argentinean origins and has its headquarters in Holland. The gravity of the situation is reflected in the fact that the area was classified as being in a state of environmental emergence in 2013 and as constituting a sanitary emergence in April 2014.

The case study outlines the human rights violations that have arisen as a result of the oil exploitation and the extent to which the obligation to provide remedies has not been respected. The rights impacted span rights to a healthy environment, to water, food, health, adequate housing as well as territorial, cultural and self-determination rights, including the rights to consultation and participation in decision-making, the right to determine development priorities and rights to practice religion and protect sacred places. In addition to these collective rights affirmed under ILO Convention 169, there have also been violations of the communities' right to freedom of expression and peaceful assembly.

Despite the longstanding protests of the affected communities neither the State nor the Pluspetrol have taken the appropriate actions. At the State level significant obstacles exist to access to remedy, including lack of information and a lack of willingness of the responsible bodies to engage with the complaints made by the communities. As a result, there have been no remedies forthcoming to date in relation to the cases filed. In addition the environmental oversight bodies are weak. In cases where they have sanctioned the company it has refused to accept their determinations. In 2012, following community pressure, the State conducted its first environmental assessment leading to declarations that the area was in a state of environmental and sanitary emergency and the initiation of process of dialogue. While this constituted a step in the right direction, compliance with the declarations has been inadequate and the company has withdrawn from the dialogue process, significantly weakening its potential to deliver remedies. In addition, rather than protect the indigenous communities' rights the State is instead implementing reforms and policies which promote extractive industries to the detriment of those rights. This is reflected in the fact 30% of the country is under mining, oil and gas concessions, with 60% of the oil concessions located in the Amazon.

Remedial actions taken to date have all been short term measures, such as the distribution of water and limited compensation to certain communities, and are disproportionate to the harms suffered and the damage caused. In addition they lack steps to ensure that further harms are not caused. A particular concern relates to the uncertainty in relation to consultations around the renewal of the licence for lot 1AB (now referred to as lot 192). Finally, as the case study notes, the issues which arise are related to protection of territory and consequently are of a strategic nature. As a result the conflicts which these operations have generated will not be resolved by focusing exclusively on environmental analysis or access to water for consumption and health.

Chapter 4: Mahan Coal Mining in Madhya Pradesh, India

The case addresses the situation of indigenous communities namely the Baigas, the Gonds, the Agarias, the Khairawas and the Panikas in Mahan, Singrauli District of Madhya Pradesh, in central India, who are opposing a proposed coal mine in their territories. Permissions have been granted for the project to proceed, however, forest clearing activities have yet to commence and the legality of those permissions is being challenged by the communities who are actively protesting against the project. The proposed coal mine is located in a 20,000 hectare stretch of dense deciduous forest. It would necessitate the clearing of 1,200 hectares of that forest resulting in a profound affect on the livelihoods of 62 villages, of which approximately one third are indigenous communities.

The Mahan Coal Mining block was allocated by the Central Government of India to a joint venture of two private companies – Essar and Hindalco – in April 2006 without consultations with the affected communities. The coal from the mine is to be used to fuel two large power plants - one owned by Essar and the other by Hindalco - in Singrauli District.

In 2011 and early 2012, the affected communities started organizing themselves leading to the formation by five villages (Ammelia, Budher, Suhira, Bandhaura and Barwantola) of the Mahan Sangharsh Samity (MSS) to demand their forest rights and to oppose the coal mining project. The villagers from the most directly affected communities began sending letters to the authorities responsible for the implementation of the Forest Rights Act (FRA), and to the Central Ministry for Environment and Forests stating violations of their rights stipulated in the FRA. Despite these legal submissions, the district authorities, the police and Central and State government officials simply ignored the law and the issues raised by the villagers.

The communities attempted to table resolutions in the gram *sabha* (village assemblies) meetings for the recognition of community forest rights, however, company agents in connivance with local officials are reported to have prevented the resolutions from being voted upon or recorded in the register. There was no attempt by the authorities to act on this interference in the gram *sabha* process which constitutes a criminal offense under India's laws.

The Mahan coal mine case reveals that State institutions have either abdicated their responsibility, have been rendered inaccessible or ineffective, or have been subverted and ignored. A series of illegalities have been associated with that project since 2011. These include the subversion of *gram sabhas* (village councils) by the district administration, preventing them from adopting resolutions protecting the forest and instead producing forged resolutions in favour of the project in order to legitimize the issuance of permits to use the forest land for mining purposes. This has proceeded despite the mobilization of the communities and the recognition of the Minister of Tribal Affairs that the resolution was forged. No action has been taken by the police to address it. On the other hand, district officials and the company have filed civil and criminal charges against the villagers leading to four arrests in May 2014. Defamatory articles have also appeared in the media citing a leaked Intelligence Bureau report in relation to those opposing the project alleging they are merely acting on behalf of “foreign funded NGOs”, in particular Greenpeace India.

Chapter 5: Baram Dam in Sarawak, Malaysia

Indigenous peoples in the three Malaysian states – Sabah, Sarawak and Peninsular Malaysia – share a common experience of land dispossession brought about by development projects imposed in their territories, discrimination and loss of traditional livelihoods, knowledge and culture. The Malaysian case study addresses the situation of the indigenous peoples impacted by the planned Baram Dam between the villages of Long Na'ah and Long Kesah on the Baram river in Sarawak. The dam is a component of the government's “Sarawak Corridor of Renewable Energy” (SCORE) programme under which the state owned Sarawak Energy Berhad (SEB) will construct 12 large hydropower dams in Sarawak. To date two of the dams have been constructed, namely the Bakun and Murum dams. These dams necessitated the resettlement of thousands of indigenous residents and even greater numbers will be displaced by the other planned dams which will flood agricultural lands and areas of cultural and spiritual significance to indigenous peoples. Those who have been resettled complain that the land they have been provided is inadequate to maintain their livelihoods and that the housing does not meet their basic needs. As with the proposed Baram dam, consent was not obtained for the Bakun and Murum dams and indigenous peoples were not involved in determining the resettlement packages.

It is estimated that between 6,000 and 8,000 people belonging to Kenyah, Kayan and Penan peoples would be displaced from their lands if the Baram dam is constructed. The project is opposed by community members who have organized themselves, filed petitions, lobbied international organizations and erected and maintained barricades for over a year up to present to halt construction. Some of those opposing the project have been subject to harassment and detention, while indigenous leaders have been offered financial incentives to accept the project and the state is reported to have interfered in the appointment of village headmen and chiefs.

The dam will serve to provide energy for export to Indonesia via cross-border power transmission lines which the Asian Development Bank is funding. The Bank rejects the argument of the indigenous peoples and their support organizations that it bears a responsibility to ensure that the associated dam building project proceeds in accordance with its safeguards in relation to indigenous peoples' rights.

According to the Indigenous Peoples Network of Malaysia (JOAS) many of the country's indigenous communities have filed court cases in order to have their land claims validated. However, these cases are rendered moot due to delays as injunctions are not issued, thereby enabling development projects to proceed and cause irreversible harm before claims are addressed. In addition language barriers and culturally inadequate court procedures, in particular around cross examination, constitute major obstacles to access to remedies through the courts for indigenous peoples.

Chapter 6: Economic Land Concessions for Rubber Plantation in Rattanakiri, Cambodia

The predominant business and human rights issue in Cambodia concerns the non-consensual encroachment (also referred to as land grabs) of economic land concessions for the rubber plantations on indigenous people's land. Since 2003 in the region of 700,000 Cambodians have been affected by such land grabs which are estimated to have resulted in approximately 400,000 evictions. Resistance is frequently met with violence and the issue was prominent in anti-government demonstrations which were met with excessive use of force by the authorities.

The case study focuses on the issues of access to remedy for the indigenous peoples whose rights have been affected by the activities of a large Vietnamese company, Hoang Anh Gia Lai (HAGL) which operates rubber plantations through a number of subsidiaries in Rattanakiri, Cambodia, as well as in Laos. Dragon Capital Group Ltd (DCGL) invests in HAGL through the Vietnamese Enterprise Investments Ltd (VEIL) fund in which the International Finance Corporation (IFC), the financial lending arm of the World Bank Group, along with other international banks, has investments. The case therefore raises the issue of the responsibility of financial institutions for investments made via financial intermediaries in projects which have negative impacts on indigenous peoples' rights.

HAGL's operations have been associated with illegal seizures of farming and grazing lands and the destruction of forests and sacred sites, and adverse environmental impacts in 17 indigenous communities located in the districts of Andong Meas and O'Chum, Ratanakiri Province. No compensation was provided for the communal losses, while in some cases households received compensation for rice fields and farming land. However, this compensation was inadequate and was only accepted due to the absence of any alternatives. The operations were in breach of Cambodian laws and IFC safeguard policies (in particular in relation to transparency, indigenous peoples rights and environmental protections), while IFC itself failed to ensure that the project was subject to prior review and approval and that the client had the capacity to implement it in an appropriate manner.

The communities submitted complaints to the commune councils, district and provincial authorities and also to mechanisms at the national level as well as organising a non-violent demonstration at the government's provincial office and bringing the case to the attention of indigenous parliamentarians. However, the proposed solutions offered inadequate protection for indigenous peoples' land and cultural rights. Judicial remedies were not pursued as the communities perceived the mechanisms to be ineffective and corrupted, serving instead as a tool for legitimizing forced evictions and prosecuting human/land rights defenders.

The case gained international attention following a 2013 Global Witness report entitled *Rubber Barons*. This led to disinvestment by Swiss-based CBR Investments and attention being focused on Deutsche Bank and the International Finance Corporation (IFC). In February 2014, the communities and their supporting organizations lodged a complaint with the IFC-Compliance Advisor Ombudsman (CAO). The CAO's assessment was concluded in May 2014 and led to the complainants and the company agreeing to engage in a voluntary dispute resolution process which the CAO is leading. Part of the process is to provide community representatives with capacity building around negotiation and bargaining and to establish the ground rules for negotiations. In addition, HAGL committed to a moratorium for a number of its projects until November 30th, 2014. However, community reports indicate that a number of its subsidiaries are nevertheless continuing to clear community forests.

Recommendations

Each of the six chapters concludes with a series of recommendations which address the issue of access to remedy in the particular context of the case study. This section provides a synthesis of those recommendations which apply irrespective of the local, national or regional context and groups them by actor and where appropriate by theme.

To the UN Work Group on Business and Human Rights (in keeping with Human Rights Council resolution A/HRC/26/L.1 2014):

- include a specific focus on indigenous peoples' rights in its agenda item on the issue of access to remedy, judicial and non-judicial, for indigenous victims of business-related human rights abuses, in order to achieve more effective access to judicial remedies at the Forum on Business and Human Rights, and
- ensure the full and effective participation of indigenous peoples in the consultative process with States in 2015, to explore and facilitate the sharing of legal and practical measures to improve access to remedy, judicial and non-judicial, for indigenous victims of business-related abuses, including the benefits and limitations of a legally binding instrument.

To corporations:

- publically recognize the negative impacts which they have caused during their operations and to commit to providing remediation for these, including through reaching agreements with the affected communities in accordance with the Guiding Principles;
- demonstrate, through tangible actions, steps to mitigate the negative impacts which they have generated and improve their relationships with the directly and indirectly impacted communities;
- establish a protocol for dialogue, consultation and participation in conjunction with all directly and indirectly affected communities in accordance with international standards as affirmed in ILO Convention 169 and the UNDRIP;
- revise their policies to recognize international indigenous rights standards including FPIC and perform updated impact assessments in conjunction with the affected communities and make these publically available as soon as they are completed;
- develop remedial plans to address their negative impacts to date, including: individual and collective compensation, social investment programmes developed with indigenous authorities, and resettlement compensation which guarantees dignified conditions of life;
- establish a mitigation plan in conjunction with the affected communities and their authorities and a permanent monitoring system with the participation of indigenous authorities;
- decontaminate water and affected areas and take urgent measures to prevent further environmental harms, in particular oil spills and pollution of water and ensure transparency when and where contamination occurs;
- comply with State imposed sanctions and avoid contesting them or attempting to inappropriately influence the State when it is attempting to ensure or assess compliance with indigenous peoples' rights;
- condition their investment on the State's compliance with its duty to hold prior consultations in order to obtain consent with directly and indirectly affected indigenous peoples;

- ensure the public disclosure of key documents relating to investment projects and make information on investments and bidding processes for concessions as well as future plans accessible to indigenous peoples and their support organizations;
- ensure that consultations are meaningful, inclusive and accessible to all affected peoples and communities with due consideration given to their rights, perspectives and current livelihood activities; and
- support and participate in dispute mediation process and adhere to their recommendations and avoid all potentially harmful activities, in particular in relation to land and resource usage, while dispute resolution processes are ongoing.

To host States:

- revise legislative frameworks so that they are indigenous rights compliant and ensure this and environmental legislation is fully enforced, including by obliging businesses to ensure that their operations are rights-based;
- review relevant laws in relation to settlements and compensation and amend in accordance with international standards;
- suspend the issuance of concessions until environmentally affected areas are decontaminated and legal protections are guaranteed;
- adopt urgent measures to avoid environmental harms and require companies to decontaminate lands and water;
- conduct participatory health impact assessments, address the economic, social, cultural, environmental, civil and political rights of the communities in accordance with their own perspectives on their needs and ensure that communities are provided with basic services in a manner that is acceptable to them;
- investigate and sanction companies for violations of rights and oblige them to compensate communities for harms caused and the use of their lands;
- publically apologize for harms caused as a result of business activities in indigenous peoples' territories;
- stop criminalization or any form of harassment of community members who assert their rights in the context of business related harms;
- proceed with demarcation and titling of indigenous territories, promote alternative non-extractive forms of development, and revoke easement rights granted to companies;
- conduct free and informed consultations in order to obtain FPIC before issuing concessions
- establish an independent participatory monitoring mechanism to oversee project operations and the effectiveness of grievance mechanisms;
- facilitate community access to effective remedial mechanisms and provide them with the necessary financial and technical assistance, including greater legal aid and support to communities in the context of strategic litigation and efforts to obtain redress;
- establish independent land commissions or tribunals, staffed by trusted legal experts on indigenous rights, with powers to decide on complaints and issues pertaining to their land claims, including appropriate settlements or redress;
- speed up the processing of complaints by establishing special courts which could also act as escalation mechanisms from land commissions or other grievance mechanisms;

- create an independent credible mediation mechanism which would support judicial processes aimed at addressing land disputes and would make use of indigenous customary law;
- establish a participatory rights-based process for land use planning in indigenous territories;
- expand and consolidate the legal powers of indigenous authorities, in particular their power to give or withhold FPIC for land use and mining activities;
- adopt financial regulations to ensure that investment funding is only authorized for projects which respect indigenous rights and the requirement for FPIC and effective grievance mechanisms;
- support dispute resolution process of international financial institutions and ensure that outcomes respect international recognized indigenous rights and are swiftly enforced and avoid entering into dispute resolution or compensation negotiations with companies where a parallel dispute resolution process has been initiated by indigenous peoples;
- take urgent action against company employees and associates or State agencies where community members receive threats or are in any way intimidated when attempting to assert their rights; and
- respect the requests of affected communities for land restitution and ensure that all compensation and reparations are culturally appropriate and acceptable to the affected communities.

To home States:

- where necessary modify the legal framework to facilitate holding companies to account for indigenous rights violations overseas.
- conduct and publicize participatory evaluations of the risks and impacts of their companies operations on the rights of affected peoples overseas;
- guarantee the enjoyment of the right to effective, accessible and timely remedy through judicial and non-judicial mechanisms which ensure adequate reparations in the form of restitution, compensation, rehabilitation and non-repetition; and
- provide the necessary legal and technical expertise as well as financial resources for communities alleging corporate related human rights violations to access these judicial and non-judicial mechanisms; and conduct civil and criminal investigations of companies, where appropriate sanctioning them for rights violations.

To international and regional human rights systems:

- request information from home and host States and where appropriate companies in relation to measures that have been adopted to enable victims to access effective remedial mechanisms; and
- issue findings and recommendations on measures that should be adopted to address situations of corporate related indigenous rights harms.

To financial Institutions and investors:

- ensure that indigenous rights due diligence is conducted for all projects impacting on indigenous peoples and monitor client compliance with international standards;
- ensure that robust environmental and social impact assessments are conducted and that indigenous peoples' FPIC is obtained for projects impacting on their rights;
- review all direct and indirect (through financial intermediaries) investments to identify any high risk projects in indigenous territories and ensure access to effective grievance mechanisms;
- ensure that the violations are redressed in accordance with the process and outcomes sought by communities, including not divesting prior to the resolution of the issues where the communities hold that doing so would leave them without the possibility of redress for harms; and
- be proactive and initiate investigations into the situation of the communities which are not in a position to raise their own grievances and facilitate dispute resolution processes in such contexts.

To the international community:

- urge States to suspend all new projects until the legislative, policy and institutional reforms necessary to uphold indigenous peoples rights have been fully implemented; and
- support communities in their complaints to judicial and non-judicial mechanisms and advocate for these mechanisms to ensure that remedies are adequate, culturally appropriate and proportionate to harms;

To non-governmental organization:

- cooperate with indigenous communities to strengthen their capacity to engage in dispute resolution processes and support them in monitoring activities and publically reporting on violations of their rights.

Operational level grievance mechanisms principles:

Corporations, state actors and any third parties involved in the development, implementation, and oversight of operational-level grievance mechanisms, should ensure that these mechanisms adhere to the following principles:

- be operational from the project outset within a framework of indigenous rights due diligence, participatory impact assessments, FPIC and benefit sharing agreements with indigenous peoples;
- be based on respect for indigenous peoples' judicial institutions and customary law and the use of these as and where desired by the community;
- be developed through full and effective participation and with the FPIC of all affected communities;
- be formalized in FPIC based agreements giving rise to contractual obligations to address rights violations;
- ensure indigenous peoples participation in their operation and oversight and provide agreed channels for escalation and adjudication of disputes that cannot be resolved through mediation;
- interface effectively and efficiently with existing judicial and non-judicial grievance mechanisms in order to maximize the possibility for grievance resolution and in no way obstruct access to State based judicial or quasi-judicial mechanisms;
- ensure transparency by facilitating trusted independent third party monitoring; and
- guarantee culturally appropriate compensation that is fair, just and equitable.

Finally, good faith dialogue is necessary between key extractive sector actors, international financial institutions, representatives of indigenous peoples, civil society, States and the international community in relation to grievance mechanisms and access to remedy addressing:

- the role which the international community, civil society actors and academia could play in the development, oversight and scaling up of operational-level grievance mechanisms;
- how to ensure that indigenous peoples' customary institutions and laws are accorded appropriate respect in dispute resolution mechanisms and that operational-level grievance mechanisms are entrenched in contractually binding FPIC agreements;
- fund management structures to ensure that company financed mechanisms operate in a truly independent manner;
- mechanisms to ensure empowerment of indigenous peoples and capacity building in relation to indigenous peoples' rights in corporations; and
- steps towards acknowledging the legacy of extractive industry activities and initiating processes of reconciliation in cooperation with indigenous peoples with the aim of providing culturally appropriate compensation and redress and building new rights-based relationships.

ⁱ Briefing Paper produced by Dr Cathal Doyle, Research Fellow, Middlesex University, London, for AIPP, Almaciga and IWGIA as part of the forthcoming book Access to Remedy: Business and Indigenous Peoples' Rights of which he is the editor.

ⁱⁱ A/HRC/26/L.1 2014 paragraphs 8 & 10.



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