



CULTURAL RISK ALERTS FOR CORPORATE LEADERS

JUNE 2012

Eleventh Session of the United Nations Permanent Forum on Indigenous Issues Calls for Testimony on Corporations

Nearly 2,000 delegates attended the 11th Session of the United Nations Permanent Forum (UNPFII) on Indigenous Issues at UN Headquarters in New York City on May 7-18, 2012. Within the numerous UNPFII sessions there were several panels and reports on the status of relationships between Indigenous Peoples and corporations.

UN REPORT: Campaigns Against Individual Companies Counterproductive

A major study was released at the UNPFII: “*An Analysis on the Duty of the State to Protect Indigenous Peoples Affected by Transnational Corporations and Other Business Enterprises*,” from the UN Economic and Social Council (ECOSOC). The “Analysis” covers the myriad disruptive and negative impacts on Indigenous Peoples from commercial extractive projects, it observes:

While a few cases of good practices can be found on the part of the corporations that comply with international and national norms, concerns remain largely on a systemic level. The current system in many parts of the world caters to codes of conduct designed to focus on the interests of the corporations....Incentives are aligned so that States are inclined to protect the interests of corporations investing in their countries, rather than safeguarding the well-being of indigenous peoples. (para. 5)

To protect Indigenous peoples, “the focal point in the business and human rights debate *needs to expand beyond individual corporate liability for wrongdoing. An individual liability model alone cannot fix larger systemic imbalances* in the global system of governance” (para. 55) (emphases added). The “Analysis” does not call for a moratorium on media campaigns against individual companies but it does recognize them as counterproductive results to affecting systemic change.

UN Expert Mechanism to Review Corporate Practice and Indigenous Rights

The UNPFII announced that the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) will hold a hearing on, “Indigenous Peoples, Extractive Industries and Rights Affirmed in Treaties, Agreements and Other Constructive Arrangements,” at the UN’s Palais de Nations in Geneva on July 12, 2012. Coordinated by the International Indian Treaty Council, panels will include the chair of the Expert Mechanism on the Rights of Indigenous Peoples, the UN Special Rapporteur on the Rights of Indigenous Peoples, and representatives from the Permanent Forum on Indigenous Issues, the Committee on the Elimination of Racism and Discrimination, and the Maori, Sioux and Cordillera communities.

UN Hosts First Training Workshop on Corporations

First Peoples Worldwide sponsored a session at the 11th session, entitled “Implementing Corporate Responsibility and Free, Prior, Informed Consent.” Panel members included the Chair of the UNPFII, the lead EMRIP Expert, President of First Peoples Worldwide, Director International Indigenous Treaty Council and Vice President Trillium Assets. Participants included social investors, corporations and Indigenous leaders. The panel facilitated a rich positive discussion on the development and progression of Indigenous and corporate relations, the clear need for increasing recognition and implementation of FPIC, the future of improving corporate and Indigenous relations.

At the workshop, FPW released a beta version of a training guide, *The Indigenous Peoples’ Guidebook on FPIC and Corporation Standards*. The Guidebook is a tool for Indigenous communities who are actively engaging with corporations. (See this issue’s Spotlight for excerpts that feature the UN standards addressing Indigenous rights.)

<http://social.un.org/index/IndigenousPeoples/UNPFIIISessions/Eleventh.aspx>

<http://www.un.org/esa/socdev/unpfii/documents/2012/session-11-e-c19-2012-3.pdf>

<http://firstpeoplesblog.wordpress.com/2012/05/23/implementing-corporate-responsibility-and-fpic-at-the-unpfii/>

http://www.firstpeoples.org/fpicguidebook/FPW_Guidebook_5.10.12.pdf

Raizen Will Stop Sourcing Sugar Cane from Indigenous Land in Brazil

A major precedence was set when Raizen, a joint ethanol and sugar production venture between Cosan Industria e Comercio SA and Royal Dutch Shell PLC, announced that as of November 2012, it will stop purchasing cane grown on land in the Brazilian state of Mato Grosso do Sul.

The local Minister of Justice has declared that the Mato Grosso region belongs to the Guarani Koiwa, the largest indigenous group in Brazil. The current landowner has appealed the decision and it is expected that the Brazilian Federal Court will make a final ruling.

The company’s decision to stop purchasing cane grown on the land follows extensive stakeholder engagement and consultation with FUNAI, the government body that represents the rights of the Guarani. Further, Raizen has made a binding commitment in its agreement with FUNAI to invest in social programs that support and protect the welfare of this indigenous community.

The Guarani, who are the largest indigenous group in Brazil, face a chronic land shortage. Delays in the demarcation of indigenous reserves has led to violence against indigenous people.

www.bbc.co.uk/news/world-latin-america-18433008

Oil Spills Strengthens First Nations' Opposition to Enbridge Pipeline

The Canadian oil company Enbridge is estimating that 1,450 barrels (230,000 liters) of oil spilled from its Athabasca pipeline on June 18, 2012, at a location 24 miles south of Elk Point, Alberta. Enbridge is seeking approval for the Northern Gateway pipeline that would transport oil sands crude 650 miles from Alberta to the Pacific coast - crossing First Nations tribal lands. Chief Martin Louie of Nadleh Whut'en First Nation, a member of the the Yinka Dene Alliance, one of the leading First Nations opponents in opposition to the pipeline, said in reaction to the spill, “How can anybody in BC trust Enbridge’s safety promises when they spill huge quantities of oil each year, all over North America?” Two years after Enbridge’s worst-ever oil spill disaster in Michigan’s Kalamazoo river system, oil remains in the ecosystem and the river is only partially being reopened for recreational use this week. Chief Louie noted,

"These spills are exactly what we are afraid of, and Enbridge keeps on proving that we can never accept their word on safety. The string of bad spills throughout Alberta and beyond provides even more justification to say no to the Enbridge pipeline."

Opponents to Northern Gateway point out that the Enbridge spill was the third oil spill in Alberta in a month. In early June, a rupture of a Plains All American pipeline spilled nearly 3,000 barrels into a reservoir and the Red Deer River. On May 19th a well gathering system break at a Pace Oil & Gas facility near the Northwest Territories border spilled about 5,000 barrels' worth of crude into the environmental sensitive landscape.

www.forbes.com/sites/christopherhelman/2012/06/26/despite-spills-enbridge-makes-the-case-for-more-oil-sands-pipelines/3/

www.marketwatch.com/story/oil-spill-outbreak-strengthens-first-nations-opposition-to-enbridge-pipeline-2012-06-22

<http://business.financialpost.com/2012/06/20/alberta-suffers-second-major-oil-spill-this-month-as-enbridge-pumping-station-leaks-230000-litres-of-heavy-crude-northeast-of-edmonton/>



SPOTLIGHT

Spotlight: Indigenous Rights Embedded in United Nations Treaties, Conventions and Mechanisms

Until recently, the UN and other international bodies focused their attention on the policies and practices of states. Over time, however, these organizations have begun to place additional emphasis on the role of private actors in protecting human rights, biodiversity and other international sustainability goals. This year, the UNPFII sent clear strong signals that the interest in corporations and Indigenous Peoples is growing too. This Spotlight will cover the UN instruments and governmental mechanisms that are relevant to corporations because they provide redress of Indigenous grievances. More information can be found in FPW's *Indigenous Peoples Guidebook on FPIC and Corporation Standards*. In addition, the Guidebook lists private standard-setting organizations whose purviews are of concern to Indigenous peoples, from Fair Trade to the Roundtable on Responsible Soy to the International Council on Mining and Metals: http://www.firstpeoples.org/fpicguidebook/FPW_Guidebook_5.10.12.pdf

Indigenous rights are addressed both directly and indirectly in a number of UN treaties, conventions and monitoring bodies. Here are the vehicles where human and Indigenous rights are most prominently embedded.

The **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)** (2007) mostly directly enshrines rights that “constitute the minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world.”

UNDRIP explicitly affirms FPIC and the obligation of states to adopt it. It also recognizes a number of closely related rights such as self-determination, participation in decision-making, control and use of traditional lands and natural resources, maintenance, control, protection and development of cultural heritage including genetic resources, and security in subsistence and development.

Of particular importance regarding interactions between Indigenous peoples and corporations:

- Article 10 states that Indigenous peoples shall not be forcibly removed or relocated from their lands or territories without their FPIC,
- Articles 19 obliges States to obtain the FPIC of Indigenous Peoples before adopting legislative or administrative measures,
- Article 29 states that Indigenous peoples must give their FPIC before hazardous materials are stored or disposed of on their lands,
- Article 32 obliges States to obtain FPIC prior to the approval of any development project affecting Indigenous Peoples' lands and resources, and,
- Article 42 calls on states and UN agencies to “promote respect for and full application of the provisions of this Declaration.”

These themes also permeate the documents and mechanisms:

- **UN Conventional Mechanisms** (called “conventional” as they result from international human rights treaties or conventions) can be effective in holding signatory parties accountable for human rights.
- Compliance with UN treaties, covenants, conventions and protocols are monitored by **treaty monitoring bodies (TMBs)**, which are composed of independent experts elected by the State parties. These include the **Human Rights Committee**, the TMB for the International Covenant on Civil and Political Rights, and the **Committee on the Elimination of Racial Discrimination (CERD)**, the TMB for the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

The HRC has consistently interpreted the right of self-determination to include the right to lands and natural resources, stating that the unilateral extinguishment of aboriginal title (the right of use) is inconsistent with the right of self-determination. In its General Comment 23, the HRC requires that Indigenous Peoples have access to lands and natural resources in order to preserve their culture.

CERD has unique complaint and urgent action/early warning procedures that have been effectively utilized by Indigenous Peoples to address threats from mining and other forms of resource extraction. Any Indigenous nation, tribe, group, individual or NGO may file an urgent action/early warning against any state party.

- The UN Human Rights Council’s (UNHRC’s) **Special Procedures** can be effectively used to establish human rights standards against corporate abuse and address states’ responsibilities. The Council’s system of thematic human rights investigators (usually called “rapporteurs”) act on specific complaints and examine states’ responsibility to protect human rights. The **Special Rapporteur for Indigenous Peoples** (established in 2001) is one of 30 such appointees; the office is currently headed by Professor James Anaya. Although Special Procedures’ recommendations are not legally binding, they create strong pressure on states to respond. There is generally no need for a state to ratify or sign any specific covenant or convention to be subject to investigation under these processes.

Indigenous Peoples have utilized a number of other UN Special Procedures to effectively to call attention to human rights abuses that involve corporate activity, calling attention to the states’ duty to protect rights including access to food, housing, health and freedom of religion.

For example, as a result of an investigation by Special Rapporteur Anaya into the impact of Goldcorp’s Marlin’s operations on Indigenous communities in Guatemala, the InterAmerican Court of Human Rights, the ILO and the World Bank Group’s International Finance Institution’s ombudsman have all called for the suspension of its mining activity.

The UNHRC’s **Working Group on Human Rights and Transnational Corporations**, which consists of five independent experts, seeks communications from all relevant sources, including Indigenous peoples and corporations. It will also work with the numerous other Special Procedures that receive communications from Indigenous nations and nongovernmental organizations.

The **UN Permanent Forum on Indigenous Issues** was established by the UN Economic and Social Council (ECOSOC) in 2000 at the request of Indigenous peoples, who lacked confidence in existing UN bodies' abilities to deal with Indigenous issues. Governed by 16 appointed independent experts, it is mandated to provide expertise and promote integration and coordination of indigenous-related activities. The Permanent Forum holds annual two-week sessions.

The UN's **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security** (2012) recognizes the rights of Indigenous Peoples in a number of provisions. These guidelines instruct states to assume active responsibility for the human rights compliance of transnational corporations, as well as extend direct responsibility to corporations themselves.

The **Expert Mechanism on the Rights of Indigenous Peoples** is a subsidiary of the UN HRC, mandated to provide thematic advice. A recent study examined the right of Indigenous peoples to participate in decision making with transnational corporations, which was followed up by a deeper look at decision-making participation with extractive industries.¹

¹ Available respectively at www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-42_en.pdf and www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session5/A-HRC-EMRIP-2012-2_en.pdf.