

On the work of the United Nations Permanent Forum on Indigenous Issues in extractive industries and the World Conference on Indigenous Peoples

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Subcommittee on Human Rights of the European Parliament

11 September 2014

Distinguished Members of the European Parliament,

Ladies and Gentlemen,

I would like to thank you for the invitation to address the Subcommittee on Human Rights of the European Parliament as a Member of the United Nations Permanent Forum on Indigenous Issues (UNPFII). This is a valuable opportunity for me to share with you the work of UNPFII in one of the most crucial themes for indigenous peoples: the impact of extractive industries on indigenous peoples' rights. I will also comment on the preparations for the upcoming World Conference on Indigenous Peoples (WCIP) as it relates to extractive industries, and on the study on Indigenous Peoples, Extractive Industries and Human Rights by Dr. Julian Burger.

UNPFII and UNDRIP

UNPFII is an advisory body to the Economic and Social Council (ECOSOC), with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted in September 2007 mandates the United Nations, its bodies, including the Permanent Forum on Indigenous Issues and specialized agencies, including at the country level, to promote respect for and full application of the provisions of the Declaration and follow up on its effectiveness. UNDRIP is the most advanced and comprehensive international instrument on indigenous peoples' rights. It builds on existing human rights enshrined in international human rights treaties and embodies global consensus on indigenous peoples' rights.

UNDRIP marked a significant achievement by indigenous peoples in obtaining international recognition of their basic rights, including self-determination and land and natural resources rights. As reiterated in Article 43, the UN Declaration sets forth the minimum standards for the survival, dignity and well being of the indigenous peoples of the world.

Extractive industries

As we are aware, on many occasions, extractive industries have violated the rights of indigenous peoples, especially rights related to lands, territories and resources, but in some instances even the right to life.

Often these violations occur as a result of a collusion between extractive corporations and States, with indigenous peoples left on the sidelines or entirely removed from the planning

and decision-making process. As Prof. James Anaya, former UN Special Rapporteur on the Rights of Indigenous Peoples, has stated, “the prevailing model of resource extraction is one in which an outside company, with backing by the State, controls and profits from the extractive operation, with the affected indigenous peoples at best being offered benefits in the form of jobs or community development projects that typically pale in economic value in comparison to profits gained by the corporation”¹.

Article 32 of the UNDRIP states that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. It also requires States to 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.

It elaborates further, stating that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

UNPFII and Extractive Industries

Responding to the concerns raised by indigenous peoples at UNPFII sessions, in 2009 UNPFII organized an Expert Group Meeting to better look into the issue of extractive industries, Indigenous Peoples’ rights and corporate social responsibility². Indigenous peoples reported that some businesses have either directly or indirectly caused or contributed to adverse impacts on indigenous peoples’ rights: and in some cases such impact has been irremediable.

The expert group meeting recommended that States “review laws and policies and structures on extractive industries that are detrimental to indigenous peoples, and ensure consistency with the UNDRIP and other international instruments protecting the rights of indigenous peoples. It concluded that “there should be a moratorium on further extractive industry projects that affect or threaten indigenous peoples until structures and processes are in place to ensure respect for human rights”. The Meeting also recommended States to “ensure that the legislation governing the granting of concessions includes provisions on consultation, free, prior and informed consent, in line with international standards and which recognize the right of indigenous peoples to say no”.

UNPFII has adopted several recommendations on extractive industries. In 2009 to follow up on the expert group meeting the PFII “Called upon States and corporations to fully recognize the presence and effective participation of indigenous peoples in all negotiation processes relating to the entry of extractive industries, infrastructure projects and other development

¹ Prepared by James Anaya, A/HRC/24/41, 1 July 2013

² E/C.19/2009/CRP.8 4 May 2009. Report of the international expert group meeting on extractive industries, Indigenous Peoples’ Rights and corporate social responsibility. New York 18-29 May 2009.

projects into their communities consistent with the United Nations Declaration on the Rights of Indigenous Peoples...”³. Building on its work on this issue, in 2012 the PFII stated that “According to articles 25 to 36 of the Declaration, States shall uphold the right to the free, prior and informed consent of indigenous peoples and avoid, minimize and adjudicate disputes concerning land, territory or resources arising from extractive industries, large-scale water, energy and infrastructure projects, and agricultural investments”⁴.

Some Members States have reported to the Forum certain level of compliance with its recommendations on extractive industries. In 2010 Finland reported that the 2009 Bill of Mining Act and the Water Act include provisions aimed at giving due consideration to indigenous peoples rights including the obligation to negotiate with the Sami in projects affecting them.

Bolivia reported that the Government has implemented since 2007 consultation processes through the Ministry of Hydrocarbons and Energy in the framework of their Law 3058. In 2014 11 companies are involved in consultation processes with indigenous peoples in order to obtain their free, prior and informed consent in development projects.

Mexico reported to the Forum that the Government promotes the respect and exercise of the right to consultations and free, prior and informed consent for indigenous peoples and has advanced in the establishment of an institutional framework to carry out these processes. A draft law proposal is being discussed in the Congress but not yet adopted. The right to consultation and free prior and informed consent is to be applied among others in development projects in indigenous peoples’ territories.

In 2010 Spain reported that it recognized the full presence and effective participation of indigenous peoples, as urged to do so by the Permanent Forum. Accordingly, applying the principles laid down in the Spanish Strategy for Cooperation with Indigenous Peoples (ECEPI), it takes particular account of the principle of free, prior and informed consent in the development of activities or programmes that may directly or indirectly affect the indigenous peoples.

Members of UNPFII have also prepared specific reports on the impact of extractive industries (see annex). Members of UNPFII and the Secretariat worked together with the United Nations Global Compact in the Business Reference Guide on the United Nations Declaration on the Rights of Indigenous Peoples which was launched in 2013⁵. This handbook provides guidance for business to understand, respect and support the rights of indigenous peoples by illustrating how these rights are relevant to business activities.

³ Report of the 8th Session of the Permanent Forum on Indigenous Issues. E/C.19/2009/14, 18-29 May 2009. Par. 19.

⁴ Report of the 11th session of the Permanent Forum on Indigenous Issues. E/C.19/2012/13, 7-18 May 2012. Par. 62.

⁵ United Nations Global Compact. A Business Reference Guide. United Nations Declaration on the Rights of Indigenous Peoples, New York, 2013.

Members of the Forum have also participated in the sessions of the OHCHR Forum on Human Rights and Business advocating for the inclusion of indigenous peoples' rights in the work carried forward by this important Forum.

I am confident that UNPFII remains committed to discussing the impacts of extractive industries on the rights of indigenous peoples and will offer the topic due attention during its future annual sessions, recommendations and other channels.

World Conference on Indigenous Peoples

From 22 to 23 September 2014 the World Conference on Indigenous Peoples will be organized by the UN General Assembly in NY. The World Conference will be attended by Heads of State and Governments, Ministers, and other high level officials. The Conference will be an opportunity to share perspectives and best practices on the realization of the rights of indigenous peoples, including pursuing the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.

During the consultation to gather input for the outcome document of the World Conference, indigenous peoples frequently raised their concerns over the activities of transnational corporations and the impact of their activities in the exercise of their rights. The draft outcome document does make a concrete reference to extractive industries and indigenous peoples:

Paragraphs 17 and 18 as they currently read as follows:

“We, the Heads of State and Government, Ministers and representatives of Member States (...)

Commit to establish at the national level, in conjunction with indigenous peoples concerned, fair, independent, impartial, open and transparent mechanism to acknowledge, advance, and adjudicate the rights of indigenous peoples pertaining to lands, territories and resources. Such mechanisms will be culturally appropriate and flexible, and competent to safeguard free, prior and informed consent by indigenous peoples prior to development or use of lands, territories and resources.

Commit to address the impact of major development projects, including extractive industries, on indigenous peoples and to ensure transparency and benefit sharing. The rights of indigenous peoples regarding development of lands, territories and resources, will be incorporated into law, policies and practices.”

During the informal interactive hearings there have been proposals to strengthen as well as to weaken paragraph 18. For example, a State proposed to add the commitment “to protect indigenous peoples from the abuses and violations of their human rights by transnational corporations”, as well as calling on “Member States to promote policies to end the abuses of some transnational corporations that disproportionately affect the rights of indigenous peoples”.

Others, including the European Union proposed to change the language and instead of committing “to address the impact of major development projects” they proposed to “commit to conduct studies in consultation with indigenous peoples...”. Another State suggested to include the phrase at the end of the paragraph: “according to relevant national legislation”.

At this stage of the process, only Member States are able to influence the content of the outcome document. The negotiations to agree on its content are currently ongoing. It is expected that the standards set out in the United Nations Declaration on the Rights on Indigenous Peoples will be maintained, and its implementation outlined. It is of essence that the wording of Paragraph 18 will not be weakened during these final two weeks of negotiations.

Study on Indigenous Peoples, Extractive Industries and Human Rights

I enthusiastically welcome the Draft Study on Indigenous Peoples, extractive industries and human rights, commissioned by this Subcommittee and prepared by Dr. Julian Burger, noting that this document invites the European Union to comply with the international standards set out in UNDRIP.

I find the recommendations contained in the Study highly relevant. In particular I support the following recommendations: a) that EU Member States include reference to indigenous peoples in their Business and Human Rights National Action Plans; b) Proposal to establish a grievance mechanism where indigenous peoples can address allegations of European corporate violations of their rights and c) Strengthening or extending EU’s legislation so that corporations involved in extractive industries – both European companies as well as foreign corporations operating on the European market - can be held accountable for violations of indigenous peoples’ rights.

I look forward for the European Union to thoroughly analyze and follow up on the recommendations contained in the study in order to better protect world’s indigenous peoples from harmful impacts of extractive industries. This is an opportunity for the EU to raise the bar not only for itself and its 28 member states, but also to provide a model for other regional inter-governmental agencies to follow and/or adapt to their unique circumstances.

In conclusion, I am confident that UNPFII remains open for a continuing dialogue and collaboration with the European Parliament in matters concerning rights and well-being of indigenous peoples.

Thank you.

Oliver Loode

Member, UNPFII

Annex

Related Documents

- Report of the Expert Group Meeting on Extractive Industries, Indigenous Peoples' rights and corporate social responsibility⁶.
- Study on extractive industries in Mexico and the situation of indigenous peoples⁷.
- Consolidated report on extractive industries and their impact on indigenous peoples⁸.
- Impact of the mining boom upon indigenous communities in Australia⁹.
- Analysis on the duty of State to protect indigenous peoples affected by transnational corporations and other business enterprises¹⁰.
- Study on Indigenous Peoples and Corporations to examine the existing mechanisms and policies related to corporations and indigenous peoples and to identify good practices¹¹.
- Report on Corporations and Indigenous Peoples¹².

⁶ E/C.19/2009/CRP.8 4 May 2009. New York 18-29 May 2009.

⁷ Prepared by Saul Vicente E/C.19/2013/11, 14 February 2013.

⁸ Prepared by Saul Vicente E/C.19/2013/16, 20 February 2013.

⁹ Prepared by Megan Davis E/C.19/2013/20, 5 March 2013.

¹⁰ Prepared by Pahimane Hasteh E/C.19/2012/3, 23 February 2012.

¹¹ E/C.19/2011/12, 10 March 2011.

¹² Prepared by Pavel Sulyandziga. E/c.19/2010/CRP.1 19 January 2010.