

**OFFICE OF THE HIGH COMMISSIONER FOR  
HUMAN RIGHTS**



**INTERNATIONAL WORKSHOP ON  
NATURAL RESOURCE COMPANIES,  
INDIGENOUS PEOPLES AND HUMAN  
RIGHTS: SETTING A FRAMEWORK FOR  
CONSULTATION, BENEFIT-SHARING  
AND DISPUTE RESOLUTION**

**Moscow, 3-4 December 2008**

## **CONCEPT PAPER**

### **Background**

Indigenous peoples are among the most marginalised peoples on the planet. Numbering more than 300 million throughout the world, they usually live in very vulnerable environments that are often rich in natural resources. While some indigenous peoples live in urban areas, a large number still occupy their traditional lands and territories and rely on subsistence activities. Hunting, fishing, trapping, gathering or herding continue to be major sources of food, raw materials and income. Although there is no universally agreed definition of indigenous peoples, according to the working definition adopted in 1986 by the UN Working Group on Indigenous Populations:

*Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity; as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.<sup>1</sup>*

One of the critical issues raised by indigenous peoples is related to economic development activities taking place on their lands and affecting their resources, ways of life and well-being. Over the years, the UN's human rights programme has been informed about the often negative impact of mining projects, oil extraction, logging and other forms of exploitation of natural resources. Generally speaking indigenous peoples are not properly consulted about these activities, do not benefit and inherit the environmental and human consequences.

Notwithstanding these negative experiences, indigenous peoples have become more engaged with industry in demanding greater involvement and have shown themselves ready to seek arbitration including through the courts for damages that are incurred by their communities. The private sector itself has also developed internal guidelines on consultation, benefit-sharing and dispute resolution with respect to projects affecting indigenous peoples. Extractive industry companies have also entered into formal agreements with indigenous peoples demonstrating that, given a constructive approach, the interests of companies can be aligned with the concerns and expectations of indigenous peoples.

The Office of the High Commissioner for Human Rights (OHCHR), in response to the growing discussions of the issue, organized a workshop on indigenous peoples, private

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<sup>1</sup> E/CN.4/Sub.2/1986/7

sector natural resource, energy and mining companies and human rights in December 2001 (see Annex II). The Workshop reviewed the relationship between indigenous peoples and extractive industries from a human rights perspective focusing on three main themes: processes of consultation, benefit-sharing and dispute resolution. The Workshop provided an opportunity to hear about some positive examples of cooperation as well as to learn about the continuing difficulties encountered by indigenous communities. One of the recommendations of the Workshop was that the OHCHR continue to review experiences including best practices, elaborate a framework for consultation, benefit-sharing and dispute resolution, and undertake a study on relevant standards and industry guidelines<sup>2</sup>.

The question was taken up in July 2007 by the UN Permanent Forum on Indigenous Issues which held a workshop on the relationships between indigenous peoples and industrial companies in Salekhard, Russian Federation (see Annex III). The Workshop recommended that OHCHR organize a second workshop to draft a framework for dialogue on consultation, benefit-sharing and dispute resolution in private sector projects affecting indigenous peoples<sup>3</sup>.

The adoption by the General Assembly, in September 2007, of the Declaration on the Rights of Indigenous Peoples provides an opportunity to engage with States and the private sector on the basis of recognized standards for indigenous peoples. The Expert Mechanism on the Rights of Indigenous Peoples, which held its first session in October 2008, also offers a framework for the future elaboration of guidance through its capacity to undertake studies. Furthermore, a number of companies, including those participating in the UN Global Compact, have developed relevant guidelines and practices aimed at applying human rights standards in their work and in particular improving their relations with indigenous peoples and local communities.

OHCHR recognizes that States have the primary duty to protect against human rights abuses by non-State actors, and that this duty extends to protection against abuses by business entities. The duty to protect exists under the core United Nations human rights treaties as elaborated by the treaty bodies, and is also generally agreed to exist under customary international law. Moreover, the treaty bodies unanimously affirm that this duty requires steps by states to regulate and adjudicate abuses by all social actors including businesses.

Moreover, on 18 of June 2008, the Human Rights Council welcomed the conceptual and policy framework elaborated by the Special Representative of the Secretary General on transnational corporations and human rights. The framework rests on differentiated but complementary responsibilities. It comprises three core principles: the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies.

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<sup>2</sup> E/CN.4/Sub.2/AC.4/2002/3

<sup>3</sup> International workshop on perspectives of relationships between indigenous peoples and industrial companies, Salekhard, Russian Federation, 1 – 4 July 2007, advanced unedited version prepared by the secretariat of the Permanent Forum on Indigenous Issues.

The state duty to protect is an essential component because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business; and access to remedy because even the most concerted efforts cannot prevent all abuse, while access to judicial redress is often problematic, and non-judicial means are limited in number, scope, and effectiveness. The three principles form a complementary whole in that each supports the others in achieving sustainable progress.<sup>4</sup>

### **Objectives of the workshop**

The workshop will provide an opportunity for representatives from states, companies and indigenous peoples to consider the intersection of human rights, indigenous peoples' rights and companies' responsibilities. It is expected to contribute to a better understanding of current policies of companies on indigenous peoples, emerging norms and standards related to the rights of indigenous peoples, identify the continuing challenges faced by indigenous communities in their efforts to maintain their way of life on their traditional lands, discuss agreements that were recently concluded between indigenous peoples and companies and make recommendations for improving relationships among States, companies and indigenous peoples.

The workshop has the following main aims:

- a. To provide an opportunity for discussion among governments, private and public sector companies, the UN system, experts and indigenous peoples on extractive industries and indigenous peoples.
- b. To gather examples of good practices of agreements between extractive industries and indigenous peoples.
- c. To review and agree upon basic guidelines for extractive industries seeking to develop activities on indigenous peoples lands that can serve as the framework for discussions and agreements between the parties.
- d. To prepare a publication on extractive industries and indigenous peoples based on the findings of the seminar and other relevant material that can be disseminated and promote cooperative approaches founded on internationally agreed human rights norms.

The principal inputs to the workshop will be (a) five case studies on agreements between extractive industries and indigenous peoples, consultation processes as examples of good practice; (b) an analysis of existing industry guidelines on indigenous peoples; (c) a draft framework for extractive industry working with indigenous peoples drawn from existing guidelines and international human rights standards.

The workshop will produce a report with recommendations which will be made available to the 2009 session of the Expert Mechanism on the Rights of Indigenous Peoples. It is envisaged that the proposed guidelines will be shared widely for comments by extractive

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<sup>4</sup> For information can be obtained from document A/HRC/8/5, 7 April 2008: "Protect, Respect and Remedy: a Framework for Business and Human Rights"

industry companies, interested governments, indigenous peoples and others before being finalized and made available as a publication. The publication will contain examples of good practice.

### **Programme**

The programme would include a part in which indigenous peoples and companies' representatives could present their own experiences on negotiating agreements in so doing identifying the areas of discussion and lessons learned. Participants would be able to ask questions and comment ensuring an interactive dialogue that would identify challenges and solutions.

It is proposed that the programme also provide an opportunity for company representatives to present their policies relating or relevant to indigenous peoples. The programme would conclude with a review of a draft framework on consultation, benefit-sharing and dispute resolution.

The draft programme is attached as an annex.

The consultation is made up of ten sessions spread over two days. The first and the final session are opening and closing sessions.

The substantive sessions are divided as follows:

- a) Sessions two, three, four, five and six seek to review recent experiences or “good practices”. Each expert will summarize the experience of each case study in a 20 minute presentation. The summaries should go beyond mere descriptions of the case by raising practical issues related to negotiation and implementation of the agreement, challenges, lessons learnt etc. Participants will have 30 minutes after each presentation to ask questions, make comments and refer to their own experience in relation to the particular case.
- b) After identifying agreements and best practices in sessions two, three, four, five and six, session seven will leave one and half hours for an exchange of ideas among participants.
- c) Sessions eight and nine will review some company guidelines regarding projects affecting indigenous peoples and will enable participants to provide inputs and suggestions to the proposed OHCHR framework for extractive industries working with indigenous peoples.

### **Participants**

Participants will include representatives of companies that have policies on and examples of practical cooperation with indigenous peoples, indigenous peoples, lawyers and NGO representatives that have been responsible for negotiating agreements with companies

and governments and governmental officials with responsibility for implementing policies impacting indigenous peoples.

Observers would include relevant officials from UN organizations such as the ILO, UNDP, UNCTAD and others, academics who have carried out studies on the theme and related NGOs.

### **Format**

Participants will be invited to prepare background papers on their experiences which would be made available in advance and disseminated to other participants. They would make brief presentations that would be followed by discussions.

A draft framework for companies, States and indigenous peoples on consultation, benefit-sharing and dispute resolution will be prepared by the OHCHR and circulated in advance and will be used as the basis of discussions in the second part of the programme. The aim would not be to make textual revisions but solicit comments and suggestions for revision and improvement.

### **Languages**

The languages of the workshop will be English and Russian. Working papers will be made available in the language of origin only.

### **Documentation**

Further information will be distributed via email prior to the consultation. The Secretariat will provide copies of all documents during the consultation.

The Secretariat will also provide a CDROM with a number of relevant UN reports, existing companies' guidelines, agreements and background papers provided by the experts.

### **Practical arrangements**

Practical information will be sent to participants on confirmation of their participation. This will include information about hotels, transport, visas and other such information.

### **Further information**

For further information on the seminar, please contact the Indigenous Peoples and Minorities Unit at the following address:

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