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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING
THE RIGHT TO DEVELOPMENT**

**Written statement* submitted by the International Indian Treaty Council (IITC),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[19 May 2008]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

Indigenous Peoples and human rights impacts of Transnational corporations

The International Indian Treaty Council takes note with great interest of the reports of the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises.

This mandate directly and profoundly affects the rights and survival of Indigenous Peoples throughout the world. Indigenous lands and territories are under unprecedented attack, in scope, scale and accelerated pace by transnational corporations in search of natural resource exploitation. Sacred mountains lie in ruin and rubble. Waters, both surface and sub-surface, are polluted beyond redemption. The precious biodiversity upon which Indigenous Peoples depend for their means of subsistence is being lost. Indigenous Peoples continue to be forced from their traditional homelands, or to watch them be destroyed by transnational corporations eager to build dams, clear cut forests and extract gold, coal, tar sands, oil, uranium and other minerals.

The Right to Free Prior and Informed Consent has been affirmed in many international instruments, including in the recommendation of Treaty Monitoring Bodies such as the Committee on the Elimination of Racial Discrimination and, most recently, in the *UN Declaration on the Rights of Indigenous Peoples*. The full implementation of this right must be the underpinning of any effective framework for assuring that the rights of Indigenous Peoples are upheld in relation to the activities of transnational corporations. The impacts of rampant and unabated fossil fuel development by multi-national energy companies is the major source of greenhouse gasses today, creating Climate Change which has increasing impacts on Indigenous Peoples' ways of life and traditional livelihoods around the world.

In addition, the so-called "market-based solutions" to Climate Change promoted by corporations, the World Bank and other international banking and investment entities, which includes the Clean Development Mechanism, carbon trading, and the production of "bio-fuels"/"agro-fuels", further contribute to the loss of lands, forced relocations, and destruction of ecosystems for Indigenous Peoples around the world. These market-based, profit driven responses to Climate Change increase corporate profits and permit them to continue polluting, but do little or nothing to mitigate causes of Global Warming.

In this regard, we take note with appreciation of the Human Rights Council's resolution adopted at its last session, "Human Rights and Climate Change [A/HRC/7/L.21], calling upon the UN High Commissioner on Human Rights to undertake a detailed analytical study of the relationship between climate change and human rights. We encourage the SRSG to submit information for this study and to take note of its outcomes, in particular regarding the role of transnationals in contributing to climate change and the human rights impacts of market-based responses.

We appreciate the consultations conducted by the SRSG with impacted "stake holders". However, we note that few if any participants were Indigenous Peoples from Indigenous Communities actually affected by human rights abuses of transnationals.

We have also reviewed the list of human rights that the Special Representative considers to be vulnerable to abuse, and we note that the rights Indigenous Peoples' are not among them.

It is true that freedom of expression and many rights affirmed in the International Covenant on Civil and Political Rights are violated by transnationals, and that the labour standards defended by the ILO are also greatly vulnerable. But we strongly urge the Special Representative to utilize the *United Nations Declaration on the Rights of Indigenous Peoples* as a framework in assessing both the effects of and possible solutions to human rights abuses by transnational corporations. Of particular importance is the right of Free Prior Informed Consent, as expressed in Articles 19 and 32.

In fact, there are many provisions in the Declaration which are of direct relevance to this mandate. These include, *inter alia*, Articles 3 (Self-determination), 20 (Right to be secure in subsistence and development), 24 (Right to health, conservation of vital plants and animals), 26 (Right to traditional lands, territories and resources), 29 (Right to conservation and protection of environment and productive capacity of lands, territories and resources); 31 (Right to maintain, control, protect and develop cultural heritage, traditional knowledge and cultural expressions including genetic resources, seeds and medicines), 32 (Right to determine and develop priorities and strategies for development including the right to free, prior and informed consent) and 37 (Treaty Rights).

We also recommend that the Special Representative take into consideration the International Convention on the Elimination of all forms of Racial Discrimination and the standards and jurisprudence adopted by the CERD Committee. CERD General Recommendation No. 23 (1997) regarding Free Prior and Informed Consent is particularly relevant to this mandate. We underscore the recommendations of the Committee to both Canada¹ and the United States² stressing the state obligation to monitor the compliance of the transnational corporations they have licensed with regard to violations of the human rights of Indigenous Peoples both within and outside of their countries.

The Committee recommended to the US that it consult with Indigenous representatives, “chosen in accordance with their own procedures – to ensure that activities carried out in areas of spiritual and cultural significance do not have a negative impact on the enjoyment of their rights under the Convention.”³ The Committee expressed concerns about the adverse effects of exploitation of natural resources in countries outside the United States by US transnational corporations, “on rights to land, health, living environment and the way of life of indigenous peoples living in these regions.” It “encouraged” the United States to take appropriate legislative and administrative measures to prevent transnationals registered in the United States, “from negatively impacting on the enjoyment of rights of indigenous peoples in territories outside the United States.” The CERD Committee also recommended that the US hold these corporations accountable, and, “inform the Committee on the effects of transnational activities on Indigenous peoples abroad and on any measure taken in this regard.”⁴ This echoes the CERD’s finding in 2007 regarding the obligations of Canada to monitor human rights abuses carried out by Canadian mining companies.

Examples of failures by States to uphold such obligations, and at times their complicity in the abuses carried out in Indigenous communities by multinationals, are far too abundant.

¹ UN Doc. CERD/C/CAN/CO/18, 25 May 2007, para. 17.

² UN Doc. CERD/C/USA/CO/6, February 2008, para. 30.

³ Ibid, para. 29.

⁴ Ibid, para. 30.

For example, on April 7th of this year the IITC informed the Special Representative of the situation of the Indigenous Ngöbe Community of El Charco La Pava, Provincia of Bocas del Toro District of Chandinola, Panama. AES, a US Transnational has a contract to build a dam on Ngobe territory, now inside a National Park in Panama. Although the declaration of the Park was supposed to protect the Ngobe, AES and its sub-contractors, appeared at their community with heavy machinery and began to destroy the community's houses and fields. At the behest of AES, the Panamanian State Police cordoned off the community and did not allow entry or exit.

Ngobe villagers who protested were beaten, jailed and verbally abused with racist epithets, all in the presence of their children, some of whom were also beaten and abused.

We note the mandate established by Human Rights Council resolution E/CN4/res-2005-69, includes the identification and clarification of standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights, and the role of the State in effectively regulating and adjudicating transnational violations of human rights. Most importantly, the mandate calls for research and clarifications of the implications for transnational corporations and other business enterprises of concepts such as "complicity" and "sphere of influence."

In his report, the Special Representative asks a fundamental question: How and when do transnational know that their employees are violating human rights? The importance of compiling guidelines, standards and frameworks for assessment of compliance, including those contained in inter alia, the CERD and the UN Declaration for the Rights of Indigenous Peoples, would be an important step towards answering this question.

Noting that the mandate of the Special Representative includes consultations on an ongoing basis with stakeholders, including indigenous and other affected communities and non-governmental organizations, we strongly suggest to the Special Representative that he invite the submission of communications from Indigenous Peoples on ongoing human rights violations resulting from the activities of Transnationals.

We strongly believe that the mandate will benefit greatly from such exchanges, though which a more complete assessment of the human rights affected could be compiled and "complicity" or "sphere of influence" concerns could be addressed, tested and reported to this Council.

We finally recommend that the Office of the High Commissioner with the new Human Rights Council Expert Mechanism on Indigenous Human Rights and the SRSG conduct an expert seminar or consultation with Indigenous Peoples addressing abuses of Indigenous Peoples' rights by transnationals, the role, accountability and responsibility of states, and remedies that should be immediately available nationally and internationally to communities.

The development of a comprehensive framework to assess violations and a protocol for monitoring compliance by transnationals with existing human rights standards could begin to be developed at that time with the full input of Indigenous Peoples.