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Working Group on the issue of human rights and transnational corporations and other business enterprises:

United Nations,
Geneva, Switzerland

Via email: wg-business@ohchr.org

RE: Recommendations to the Working Group on the Establishment of a Work Programme

Dear Working Group and members,

Please receive our respectful greetings. We congratulate the recently named members of the Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group) and wish them Godspeed in the fulfillment of the Mandate.

The International Indian Treaty Council (IITC) is a non-profit Non-Governmental Organization of Indigenous Peoples and organizations from North, Central, and South America, the Pacific and Caribbean working for the Sovereignty and Self Determination of Indigenous Peoples and the recognition and protection of Indigenous Rights, Treaties, Traditional Cultures and Sacred Lands. The IITC was the first Indigenous NGO in Economic and Social Council (ECOSOC) Consultative Status since 1974, and is now in General Consultative Status.

Since that time and in that role the IITC many times has raised the problem of the behavior of transnational corporations and other business enterprises and their violations of Indigenous human rights. We are pleased to share the results of our experience with you with the intent of helping to establish the credibility and effective functioning of the Working Group.

The Mandate:

We have studied the mandate of the Working Group¹ and are encouraged by the “respect, protect and remedy” framework adopted by the Human Rights Council. We believe that this framework is most valuable, and should be carried out credibly and effectively.

We believe that the purposes and credibility of the mandate would be greatly enhanced if the Working Group, as part of its work programme, would receive information or communications from indigenous peoples, and where this information or communication refers to specific

¹ UN Doc. A/HR/RES/17/4, 6 July 2011, para 6 et. seq.

transnational corporations or their subsidiaries, to forward the information to them as well as the State for their response and comment.

This process would do much to give life to the Mandate, particularly paragraph 6(h), and would further both the spirit and intent of all of the other aspects of your work and the Mandate:

(a) To promote the effective and comprehensive dissemination and implementation of the Guiding Principles;

Many corporations and business enterprises are not aware of the guiding principles and would be made aware of them and other standards of responsible corporate behavior through such communications (as would States).

(b) To identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and make recommendations thereon and, in that context, to seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights-holders;

Such an exchange of information would not only aid in the identification of good practices and the implementation of the Guiding Principles, but would contribute to good practice becoming best practices and allow for a reasoned implementation of the Guiding Principles.

(c) To provide support for efforts to promote capacity-building and the use of the Guiding Principles, as well as, upon request, to provide advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights;

The exchange of information would support and encourage capacity building and the use of the Guiding Principles. Advice and recommendations regarding the development of domestic legislation and policies to States, and policies for transnational corporations could accompany the Working Group's reports.

(d) To conduct country visits and to respond promptly to invitations from States;

The state of corporate behavior and human rights as reflected by the exchange of information would do a great deal to inform the Working Group prior to its country visits, and could identify those States where country visits would be most productive.

(e) To continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas;

Again, the exchange of information between Indigenous Peoples and rights holders and transnational corporations, other business enterprises and States would do much to inform the work of the Working Group in their exploration of options and recommendations.

(f) To integrate a gender perspective throughout the work of the mandate and to give special attention to persons living in vulnerable situations, in particular children;

An exchange of specific information could focus the special attention of the Working Group on vulnerable groups.

(g) To work in close cooperation and coordination with other relevant special procedures of the Human Rights Council, relevant United Nations and other international bodies, the treaty bodies and regional human rights organizations;

Other Special Procedures and human rights mechanisms do receive such communications and do follow-up with inquiries to States already. A method of work that included business enterprises would introduce the value added dimension of corporate experience and practice, enhancing the Working Group's work. Such enhanced experiences could thus be shared between mandates and other mechanisms, enhancing all Mandates.

Without any direct, on the ground information from rights holders and Indigenous Peoples as to corporate behavior or a response from those business enterprises that might be implicated, it is difficult to see how the mandate could be carried out effectively and credibly.

The Guiding Principles:

With regard to the Working Group's consideration of the Guiding Principles² we note that the Declaration on the rights of indigenous peoples (the Declaration) is referenced only to the rights of indigenous individuals (12). We suggest, as has the Special Rapporteur on the rights of indigenous peoples, that many aspects of the rights enunciated by the Declaration are customary international law.

In their examinations of Canada and the United States in 2007, the Committee on the Elimination of Racial Discrimination voiced concern on reports of adverse effects of the exploitation of natural resources in other countries by transnational corporations on the right to land, health, living environment and ways of life of indigenous peoples abroad. The CERD Committee, in identical language, "encouraged" both Canada and the United States "to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered [in the respective States] ...which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the respective States.

"In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in Canada [and the United States] accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in Canada [and the United States] on indigenous peoples abroad and on any measures taken in this regard."³

² UN Doc. A/HRC/17/31.

³ Concluding observations of the Committee on the Elimination of Racial Discrimination, CANADA, UN Doc. CERD/C/CAN/CO/18, 25 May 2007, paragraph 17. Concluding observations of the Committee on the

At least with regard to States Parties to the International Convention on the Elimination of Racial Discrimination (ICERD) transnational accountability for violations of the rights of Indigenous Peoples is an existing legal obligation.

Indeed, with regard to its Periodic Examination of the United States, the CERD Committee, “[w]hile noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party’s obligations under the Convention relating to indigenous peoples.”⁴

Recommendations for the Work Programme:

We urge the Working Group to receive information and communications from Indigenous Peoples and other rights holders, and to transmit this information to States as well as implicated and relevant transnational corporations, subsidiaries, and other business enterprises, for their response and comment; and that further, that the resulting exchanges of information and comments together with the Working Groups own observations and recommendations be published in its reports. (Mandate 6(h)).

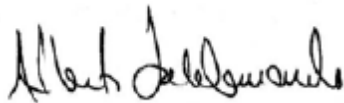
We further urge the Working Group to examine corporate behavior with regard to the rights of Indigenous Peoples as enunciated by the UN Declaration including the rights of indigenous peoples as well as individuals (Guiding Principle 12).

We also urge the Working Group, consistent with Guiding Principles 12, to examine corporate behavior according to the ICERD as it is as universal and legally binding as is the Universal Bill of Human Rights.

Conclusion:

We thank the Working Group for its kind consideration of these recommendations for its work programme, and would be more than willing to respond to any questions or comments it may care to make.

Respectfully Submitted,



Alberto Saldamando, General Counsel,
International Indian Treaty Council

cc: Andrea Carmen, IITC Executive Director

Elimination of Racial Discrimination, UNITED STATES OF AMERICA, UN Doc. CERD/C/USA/CO/6 ...
February 2008, paragraph 30.

⁴ Id, Concluding Observations, United States of America.